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 **20260271MN000000DBAB**

क	फ़ाइलसंख्या FILE NO.	S/49-470/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-447-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.02.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Letter F. No. CUS/RFD/687/2024-O/o DC/AC-Div-PBR-Cus-Prev-Jamnagar dated 18.12.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	27.02.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s SHV Energy Private Limited, Post Box No. 50, Jawahar Village, Porbandar, Gujarat - 360575.

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 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 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, 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)	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.	

कार्यालय आयुक्त (अपील), अहमदाबाद

M/s SHV Energy Private Limited, Post Box No. 50, Jawahar Village, Porbandar, Gujarat - 360575 (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Letter F. No. CUS/RFD/687/2024-O/o DC/AC-Div-PBR-Cus-Prev-Jamnagar dated 18.12.2024 (hereinafter referred to as "the impugned Letter") Issued by the Assistant Commissioner, Custom Division, Porbandar, (hereinafter referred to as "the Adjudicating authority").

2. Facts of the case, in brief, as stated in the appeal memorandum are that the Appellant have imported the products Butane (HSN 27111300) as well as Propane (HSN -27111200) (collectively referred to hereinafter as 'the imported goods) from ADNOC Global Trading Limited ('UAE Exporter'), UAE through the Appellant associated enterprise M/s. SHV Gas Supply & Risk Management, Singapore ('SRM').

2.1 Under the CEPA signed between India and the UAE as notified vide Notification No. 22/2022-Customs dated 30.04.2022 ('CEPA Notification'), the imported goods are eligible for duty exemption. These imported goods are listed in Table I of the CEPA Notification, providing exemption when imported into India from UAE, from the whole of Basic Customs Duty ('BCD'). As per Notification No. 39/2022-Customs (N.T.) dated 30.04.2022 the rules under CEPA i.e., Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules, 2022 ("CEPA Rules") have been notified.

2.2 Rule 21 (1) to the CEPA Rules provides that one of the conditions for claiming the preferential benefit is that the importer should be in possession of Certificate of Origin ('COO') at the time of importation. However, the Appellant was unable to present the COO from the UAE on account of delay in receipt of such COO from SRM Singapore. Due to the absence of the COO, the Appellant paid the entire customs duties as per the provisions under Section 18 of the Customs Act, 1962. Following this, the impugned BOE were provisionally assessed, and the Out of Charge (OOC) copy was issued, allowing the goods to be cleared for import. Subsequent to obtaining the COO from SRM Singapore, the Appellant filed an application vide letter dated 05.04.2024 with the Assistant Commissioner, Customs House, Porbandar for reconsideration of the duty benefit at the time of final assessment. This application was made to ensure that the customs duties paid earlier could be reassessed based on the availability of the COO, which would validate the claim for preferential duty treatment.

2.3 In response the adjudicating authority vide letter dated 21 May 2024, denied the duty benefit, noting that the final assessment was already completed on 15.02.2024 and upheld the order of provisional assessment. Additionally mentioned that the Company failed to provide any documentary evidence to support its claim for benefits under CEPA prior to the finalization. Considering the final assessment of the BOE without providing the appellant with an opportunity to provide additional information, the appellant has made an application for refund of excess duty paid amounting to Rs. 28,61,491 vide letter dated 06/12/2024. Subsequent to the refund application, the Assistant Commissioner reviewed the refund application and issued the impugned letter dated 18/12/2024, denying the refund of Rs. 28,61,491/- to the appellant.

3. Being aggrieved with the denial of refund of duty amounting to Rs. 28,61,491 the appellant filed the present appeal and mainly contended that;

- Benefit of customs duty exemption cannot be denied on the ground that it was not claimed at the time of importation. The Appellant wishes to submit that the preferential benefit under CEPA Notification is a substantive right of the Appellant, and it cannot be denied merely on the ground that the preferential benefit of CEPA was not claimed at the time of import. It is further contended that the Respondent has not accurately recognized that the benefit of a Notification can be claimed at any time, even if it was not initially claimed at the time of importation. In a self-assessment system, it is incumbent upon the Customs department to extend the benefit of the Notification if it is otherwise applicable, regardless of whether it was claimed initially or not. The government is not permitted to retain any amounts that are not due according to the law. The Appellant submits that as mentioned above, the imported goods are eligible for duty exemption as such goods are covered in the CEPA Notification. In the present case, the adjudicating authority have not disputed the eligibility of the imported goods for duty exemption. Consequently, the exemption benefit must be granted if it is legally available, regardless of whether it was claimed at the time of import or subsequently.
- In this regard, the Appellant place reliance on the decision reported in 2007 (209) ELT 321 (S.C) in the matter of Share Medical Care V/s. UOI, held that exemption can be claimed even at a later stage.

- The Mumbai bench of CESTAT in the case of Commissioner of Customs (ACC & IMPORT), Mumbai us. Global Vectra Helicorp reported as [2013 (297) ELT 250] has held that when exemption is available under two different headings and all conditions have been fulfilled, the benefit of exemption which are available to the assessee on the date of import, cannot be denied on the ground that the said benefit was not claimed at the appropriate time.
- Further reliance also placed in the case of Unichem Laboratories Ltd. Versus Collector of Central Excise, Bombay 2002 (145) E.L.T. 502 (S.C) wherein it was observed that

  "denial of benefit of the Notification to the appellant was unfair. There can be no doubt that the authorities functioning under this Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with the law- no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly."

  Therefore, the Appellant wishes to submit that the denial of exemption on the imported goods is unjust and bad in law. Hence, the impugned OIO should be set aside.
- Preferential duty benefits are allowable even if the COO is submitted post import. The Appellant submits that the preferential duty benefit cannot be denied merely because the same is not claimed at the time of import and COO is submitted subsequent to actual import since the same are submitted before the Respondent within a period of 12 months from the date of shipment. This position is supported by the rules outlined under the CEPA Rules, which accommodate a period of up to 12 months for the issuance of COO copies by the issuing authority, Relevant extract of the said rule is specified below:

  Rule 15 (11) of the Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules, 2022 ('CEPA Rules')

  "The Certificate of Origin shall be issued prior to, at or within a period of five working days of the date of exportation. However, under exceptional cases, where a Certificate of Origin has not been issued at the time of exportation or within five working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the Certificate of Origin may be issued retrospectively, bearing

the words "ISSUED RETROSPECTIVELY" in box 9 of the Certificate of Origin, with the issuing authority also recording the reasons in writing on the exceptional circumstances due to which the certificate was issued retrospectively. The Certificate of Origin can be issued retrospectively but no longer than twelve months from the date of shipment"

- The CEPA Rules explicitly state that even if there is a delay in issuing the COO, the preferential duty benefit can still be claimed within a 12-month period from the date of shipment. This stipulation implies that the benefit is designed to be accessible within this timeframe, regardless of minor delays in document submission. Therefore, the Appellant argues that denying the benefit due to a delay in furnishing the COO copies would be inconsistent with the CEPA rules, which allow for such delays and still ensure that the preferential treatment is available.
- Further the CBIC vide Instruction No. 21/2024-Customs dated 16 October 2024 provides for claiming the preferential treatment in cases where COO was not submitted at the time of import but was submitted subsequently within the stipulated time period. Relevant para of the said instruction is provided below.

  "2.3.... where preferential treatment was not claimed or extended at the time of import, the importer does not lose the right to claim the benefit upon subsequent submission of a valid COO within the stipulated time frame, provided that authenticity of COO and product origin are not disputed."

  In light of this provision, the Appellant humbly submits that the application of the preferential duty benefit should remain valid and enforceable as long as the COO copies are provided within the stipulated 12-month period. This interpretation aligns with the intended flexibility of the CEPA Rules, which aim to facilitate trade and ensure that minor administrative delays do not result in a forfeiture of the benefits granted under the agreement. In the present case, the original BOEs were filed on 27 September 2023 and the COO was submitted to the department by the Appellant on April 24, 2024, which is well within the time limit of 12 months as discussed above. Further, the COO also mentions that it has been issued retrospectively.

  Reliance in this regard is placed on the judgment of the Hon'ble Allahabad High Court in the case of Principal Commissioner, Noida vs. Samsung India Electronics Pvt. Ltd. 2018 (361) E.L.T. 505 (All.). In this case, the High Court rejected the appeal filed by the Revenue laying down that certificate of origin issued subsequently with retrospective effect would cover the shipment of the goods imported prior to the issuance of the certificate.

Additionally, Rule 21(3) of the CEPA Rules specifies that if excess duties are paid due to a product not initially receiving preferential treatment, a refund can be claimed for those excess duties. This rule indirectly suggests that the preferential duty benefit can still be accessed by claiming a refund for any overpaid duties, even if the benefit was not granted at the time of import. Therefore, this provision supports the argument that the duty benefit remains available and can be adjusted later through such refund mechanisms. The relevant excerpt from Rule 21(3) is provided below:

"Each Party shall, in accordance with its laws, provide that where a product would have qualified as an originating product when it was imported into the territory of that Party, the importer of the product may, within a period specified by the laws of the importing Party, apply for a refund of any excess duties paid as a result of the product not having been accorded preferential treatment"

Hence, it is submitted that the imported goods are rightly eligible for the preferential duty treatment and the Appellant's application for assessment considering the duty benefit should be allowed.

- The final assessment made is in violation of regulations stipulated under Customs (Finalisation of Provisional Assessment) Regulations, 2018. The Appellant submits that the final assessment carried out by the adjudicating authority contravenes the requirements set forth in the Customs (Finalisation of Provisional Assessment) Regulations, 2018. These regulations stipulate that when a provisional assessment is confirmed by the proper officer, the officer must complete the final assessment only after obtaining confirmation of acceptance from the importer or exporter on record. Additionally, the officer is required to inform the importer or exporter in writing of the date when the finalization has occurred. The pertinent regulation is detailed as follows:

Regulation 6(4) of the Customs (Finalisation of Provisional Assessment) Regulations, 2018 states.

"Where the final assessment confirms the provisional assessment, the proper officer shall finalise the same after ascertaining the acceptance of such finalization from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalization."

In the present case, the adjudicating authority has failed to seek and confirm the acceptance of finalization from the Appellant, which is a clear breach of the aforementioned regulation. This oversight indicates that the final assessment was conducted in disregard of the procedural requirements mandated by the regulations, rendering the assessment contrary to the prescribed legal framework. Consequently, the Appellant humbly requests that the final assessment should be deemed invalid due to this non-compliance with essential procedures.

- The final assessment is in violation of the principles of natural justice. The adjudicating authority has violated the principles of natural justice by completing the final assessment without giving the Appellant an opportunity of hearing. There has been no communication from the department to the Appellant before conclusion of the final assessment with denial of preferential duty benefit.
- Reliance in this regard is placed on the judgment of the of the Bombay High Court in the case of ZUARI AGRO CHEMICALS LIMITED VERSUS UNION OF INDIA AND OTHERS held that principles of natural justice to be followed in cases where provisionally assessed Bills of entry are being finally assessed differently from that claimed by the importer. Further also held that a speaking order is necessary wherever the Bills of entry are finally assessed differently from that claimed by the importer.
- In 'HDFC Bank Limited V. Union of India' - 2008 (7) TMI 602 - KERALA HIGH COURT the court held that where an assessee objects to the assessment being made contrary to his claim, the Assessing Officer is obliged to issue a speaking order in terms of Section 17(5) of the Customs Act. It is only on passing of the speaking order that the period for filing appeal under Section 128 of the Act commences.
- The Supreme Court, in 'Asst. Commissioner, Commercial Tax Department V. Shukla & Brothers, Bombay' 2010 (4) TMI 139 - SUPREME COURT OF INDIA has observed that reasons are the soul of orders. Non recording of reasons could lead to duel infirmities, firstly it may cause prejudice to the affected party and secondly more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements.
- In conclusion, the impugned OIO issued by the Respondent is legally unsound due to a violation of the principles of natural justice. The Appellant was deprived of the opportunity to be heard and was not provided with prior notice regarding the denial of preferential duty benefits. Therefore, the Appellant request that the final assessment be revoked and that the Appellant be afforded a proper hearing in accordance with legal standards.

4. Shri Ashwani Pahwa, Authorised Representative, appeared for personal hearing in virtual mode on 29.01.2026 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He during personal hearing further submitted that no communication or opportunity was provided to the Appellant prior to the finalization of the Bill of Entry. Further, the refund application filed by the Appellant was rejected solely on the ground that the benefit under CEPA was not claimed at the time of import. In this regard, it is submitted that the adjudicating authority has failed to comply with the procedural requirements prescribed under the Customs Act, 1962, read with the Customs (Finalization of Provisional Assessment) Regulations, 2018, which mandate due process prior to the finalization of provisional assessments. He further draws attention to CBIC Instruction No. 21/2024 dated 16 October 2024, wherein it has been categorically clarified at Paragraph 2.3 that where preferential treatment was not claimed or extended at the time of import, the importer does not forfeit the right to subsequently claim such benefit upon submission of a valid Certificate of Origin (COO). In view of the above submissions, he prays that this Hon'ble Appellate Authority may be pleased to remand the matter to the adjudicating authority for fresh consideration and revision of the Bill of Entry, after duly examining the COO and extending the concessional benefit available under CEPA in accordance with law.

5. I have carefully examined the records of the case, the grounds of appeal, and the submissions made by the appellant during the course of personal hearing.

5.1 It is observed that the Appellant have imported the products Butane (HSN 27111300) as well as Propane (HSN -27111200) (collectively referred to hereinafter as 'the imported goods) from ADNOC Global Trading Limited ('UAE Exporter'), UAE through the Appellant associated enterprise M/s. SHV Gas Supply & Risk Management, Singapore ('SRM'). Under the CEPA signed between India and the UAE as notified vide Notification No. 22/2022-Customs dated 30.04.2022 ('CEPA Notification'), the imported goods are eligible for duty exemption. These imported goods are listed in Table I of the CEPA Notification, providing exemption when imported into India from UAE, from the whole of Basic Customs Duty ('BCD'). As per Notification No. 39/2022-Customs (N.T.) dated 30.04.2022 the rules under CEPA i.e., Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules, 2022 ("CEPA Rules") have been notified. Rule 21 (1) to the CEPA Rules provides that one of the conditions for claiming the preferential benefit is that the importer should be in possession of Certificate of Origin ('COO') at the time of importation. However, the Appellant was unable to present the COO from the UAE on account of delay in receipt of such COO from SRM Singapore. Due to the absence of the COO, the Appellant paid the entire customs duties as per the provisions under Section 18 of the Customs Act, 1962. Following this, the impugned BOE were provisionally assessed, and the Out of Charge (OOC) copy was issued, allowing the goods to be cleared for import.

5.2 Subsequent to obtaining the COO from SRM Singapore, the Appellant filed an application vide letter dated 05.04.2024 with the Assistant Commissioner, Customs House, Porbandar for reconsideration of the duty benefit at the time of final assessment. This application was made to ensure that the customs duties paid earlier could be reassessed based on the availability of the COO, which would validate the claim for preferential duty treatment. In response the adjudicating authority vide letter dated 21.05.2024, denied the duty benefit, noting that the final assessment was already completed on 15.02.2024 and upheld the order of provisional assessment. Additionally mentioned that the Company failed to provide any documentary evidence to support its claim for benefits under CEPA prior to the finalization. Considering the final assessment of the BOE without providing the appellant with an opportunity to provide additional information, the appellant has made an application for refund of excess duty paid amounting to Rs. 28,61,491 vide letter dated 06.12.2024. Subsequent to the refund application, the Assistant Commissioner reviewed the refund application and issued the Impugned letter dated 18.12.2024, denying the refund of Rs 28,61,491/- claimed by the appellant.

5.3 It is observed from the records that final assessment of the subject Bills of Entry were done on 15.02.2024 and no appeal has been filed against the finally assessed Bills of Entry. The appellant is challenging assessment made in the Bills of Entry by way of refund. It is settled law that an assessment made in the Bill of Entry is an appealable order as held by the Hon'ble Supreme Court in the case of ITC Limited v. Commissioner 2019 (368) E.L.T. 216 (S.C.). The Hon'ble Supreme Court held that the revenue, as well as assessee, can prefer an appeal aggrieved by an order of assessment made in the Bill of Entry and can file an appeal. The Hon'ble Supreme Court further held that the order of assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. The Hon'ble Supreme Court further held that while processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. The relevant paras of the decision is reproduced as under:

> ***41.*** *It is apparent from provisions of refund that it is more or less in the nature of execution proceedings. It is not open to the authority which processes the refund to make a fresh assessment on merits and to correct assessment on the basis of mistake or otherwise.*
>
> ***42.*** *It was contended that no appeal lies against the order of self-assessment. The provisions of Section 128 deal with appeals to the Commissioner (Appeals). Any person aggrieved by any decision or order may appeal to the Commissioner (Appeals) within 60 days. There is a provision for condonation of delay for another 30 days. The provisions of Section 128 are extracted hereunder :*
>
> ***"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.]*
>
> *[(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :*
>
> *Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]*
>
> *(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."*
>
> ***43.*** *As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider*

amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).

***44.** The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. Re-assessment is permitted only under Section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India - <u>2009 (240) E.L.T. 490</u> (Bom.) though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. (supra).*

5.4 It is further observed that Hon'ble Supreme Court in the case of PRIYA BLUE INDUSTRIES LTD Vs COMMISSIONER OF CUSTOMS (PREVENTIVE) [2004 (172) E.L.T. 145 (S.C.] held that once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering the refund claim cannot also review an assessment order. It was further held that without the Order of Assessment having been modified in Appeal or reviewed a claim for refund cannot be maintained. Thus Refund claim contrary to assessment order is not maintainable without order of assessment having been modified in Appeal or reviewed under Section 28 of Customs Act, 1962. The relevant paras are as under:

> ***"6.*** *We are unable to accept this submission. Just such a contention has been negatived by this Court in Flock (India)'s case (supra). Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order.*
>
> ....
>
> ***8.*** *The words "in pursuance of an Order of Assessment" only indicate the party/person who can make a claim for refund. In other words, they enable a person who has paid duty in pursuance of an Order of Assessment to claim refund. These words do not lead to the conclusion that without the Order of Assessment having been modified in Appeal or reviewed a claim for refund can be maintained."*

In view of the above, I am of the considered view that the refund claim filed by the appellant, without challenging the assessment made in the Bills of Entry, is not legally maintainable. It is a settled position of law that so long as the assessment order remains unchallenged and in force, a refund claim seeking to indirectly alter the assessment cannot be entertained. In the present case, the assessment made in the relevant Bills of Entry has neither been appealed against nor modified by a competent authority. Consequently, the duty paid pursuant to such assessment retains its legal character, and the refund claim, in effect, seeks to circumvent the finality attached to the assessment. Accordingly, the appeal filed against the impugned letter rejecting the refund claim is itself not maintainable in law and is therefore liable to be rejected.

5.5 It is further observed that the appellant has not raised any specific ground in the present appeal challenging the rejection of the refund claim. A careful perusal of the appeal memorandum reveals that all the contentions advanced therein are directed against the assessment made in the subject Bills of Entry, rather than against the legality or correctness of the impugned letter rejecting the refund. In the absence of any substantive ground assailing the rejection of the refund claim, the impugned decision remains effectively uncontested. Accordingly, the appeal, being devoid of any challenge to the rejection of refund, is liable to be rejected as such.

6. In view of the foregoing discussion, the appeal filed by the appellant is rejected.

आयुक्त (अपील) कार्यालय सीमा शुल्क अहमदाबाद

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

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

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