



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,
चौथीमंज़िल 4th Floor, हडको बिल्डिंगHUDCO Building, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN- 20250671MN000000F708

क	फ़ाइलसंख्या FILE NO.	S/49-93/CUS/MUN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128कके अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTOM-000-APP-115-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	30.06.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Bill of Entry No.3100581 dated 19.04.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	30.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Mahendra Kumar & Brothers Hemendra Chambers, Grain Market, Jamnagar-361001

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.
	से संबंधित आदेश/Order relating to :



(क)	बैगेज के रूप में आयातित कोई माल.				
(a)	any goods imported on baggage.				
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.				
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.				
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क 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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-				
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.				



(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में 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.
	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

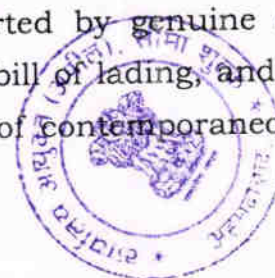
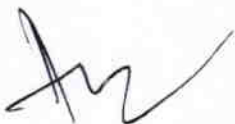
M/s. Mahendra Kumar & Brothers, Hemendra Chambers, Grain Market, Jamnagar-361001 (herein after referred to as the "appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962, challenging the assessment made in the Bill of Entry No. 3100581 dated 19.04.2024 (herein after referred to as the "impugned BOE") by the officer of the Faceless Assessment Group (herein after referred to as the "assessing officer").

2. Facts of the case, in brief, as per appeal memorandum, are that the appellant, had imported consignment of Irani Wet Dates falling under HSN 08041020 in Eight containers from Iran at Mundra port and had filed check list for Bill of Entry by making self-assessment through its Custom Broker M/s. Omkar Shipping in EDI system declaring transaction value of the goods INR 48,16,440/- (Rs. 25,500/- per MTS) as per invoice. Further, the said BOE was assigned for Faceless Assessment Group (hereinafter referred to as "FAG"), wherein the Assessing officer, during the course of assessment of the impugned BOE rejected the value declared by the appellant during self-assessment and enhanced the value to Rs. 35,000/- per MTS.

2.1 Since the cargo involved was perishable and had short shelf life, the appellant had paid the duties and taxes on enhanced value under protest at the material time as per letter their dated 29.04.2024.

3. Being aggrieved with the assessment of impugned BOE, the appellant has filed the present appeal and mainly contended the following:

- That the re-assessment was carried out under Section 17(4) without issuing any show cause notice, providing reasoning, or granting an opportunity of hearing. Further, the appellant explicitly requested a speaking order under Section 17(5), which was not issued within the statutory 15-day period.
- That the proper officer did not seek clarifications under Section 17(3) despite expressing doubts on the declared value and Final assessment was made without complying with procedures mandated under Sections 17(3), 17(4), and 17(5).
- That the declared value was supported by genuine commercial documents: invoice, packing list, contract, bill of lading, and remittance proof and No valid documentary evidence of contemporaneous imports



was provided to justify enhancement.

- That the Rule 12 allows rejection of declared value only when there is reasonable doubt and after informing the importer in writing and providing opportunity to respond. Even assuming Rule 4 (identical goods) was invoked, the department failed to show comparability in time, quantity, quality, or contract terms. Further, Rule 4(3) requires use of lowest comparable value, which was not demonstrated.
- That Similar appeals of the same appellant had been allowed in earlier years (Order-in-Appeal Nos. 137-206/2014 and 260-307/2014) by the Commissioner (Appeals).
- They have relied upon the various Judgments, few of which are as follows:
 - *CCE & ST, Noida v. Sanjivani Non-Ferrous Trading Pvt. Ltd.* 2019 (365) E.L.T. 3 (S.C.)
 - *Century Metal Recycling Pvt. Ltd. v. Union of India* 2019 (367) E.L.T. 3 (S.C.)
 - *Commissioner of Customs, Visakhapatnam v. Aggarwal Industries Ltd.* 2011 (272) E.L.T. 641 (S.C.)
 - *Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai* 2000 (122) E.L.T. 321 (S.C.)

PERSONAL HEARING

4. Shri P.D.Rachchh, Advocate attended the personal hearing on 29.05.2025 on the behalf of Appellant. He reiterated the submission made in the appeal memorandum.

DISCUSSION & FINDINGS

5. 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 assessing officer had not issued any speaking order and without giving any opportunity of personal hearing, wrongly rejected the declared value. Therefore, the main issue to be decided is that the declared value rejected by the assessing officer in terms of Rule 12 of Customs Valuation Rules, 2007 and enhancing the declared value, 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 22.07.2024 against the impugned order dated 19.04.2024 received by the appellant on 26.04.2024, which is not within the statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962.

6.1.1 In this regard, it is relevant to refer the legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days. Extracts of relevant Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

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.]

Section 128 of the Customs Act, 1962 makes it clear that 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.

6.1.2 It is observed from the Appeal Memorandums that the Appellant had received the impugned order on 26.04.2024 and appeal have been filed on 22.07.2024 resulting in a delay of 27 days in filing of appeal beyond the time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. Appellant have filed an application of condonation of delay wherein they have submitted that they were waiting for a copy of speaking order under Section 17 which was beyond their control due to which the delay has occurred. In light of the above provisions of law and considering the submissions of the Appellant and also considering the fact that the appeal have been filed within a further period of 30 days. I allow the condonation of delay in filing the appeal, taking a lenient view in the interest of justice and admit the appeal.

6.2 I find that the appeals have been filed against assessment of Bill of Entry. It is observed that the Hon'ble Supreme Court in case of ITC Ltd Vs CCE Kolkata [2019 (368) ELT216] has held that any person aggrieved by any order



which would include self-assessment, has to get the order modified under Section 128 or under relevant provisions of the Customs Act, 1962. Hence, the appeal preferred by the appellant against assessment in the impugned Bill of Entry is maintainable as per the judgment of the Supreme Court in ITC case supra.

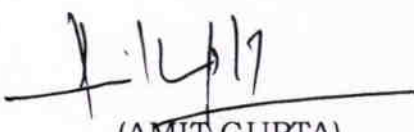
6.3 It is further observed that no speaking order by the proper officer in the matter is available. Hence, I find that entire facts are not available on records to verify the claims made by the appellant. Copy of appeal memorandum was also sent to the jurisdictional officer for comments. However, no response has been received from the jurisdictional office. Therefore, I find that remitting the case to the proper officer for passing speaking orders in each case becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order under Section 17(5) of the Customs Act, 1962 by the proper officer after following the principles of natural justice. While passing the speaking order, the proper officer shall also consider the submissions made in present appeals on merits. In this regard, I also rely upon the Judgment of Hon'ble High Court of Gujarat in case of Medico Labs – 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A (3) of the Central Excise Act, 1944 and Section-128A (3) of the Customs Act, 1962.

7. In view of the above discussion, I allow the appeal by way of remand to the proper officer for passing fresh order after examining the available facts, documents, submissions and after giving the sufficient opportunity to the appellant of being heard thus maintaining the principles of natural justice and legal provision.

सत्यापित/ATTESTED

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




 (AMIT GUPTA)
 Commissioner (Appeals)
 Customs, Ahmedabad

Date: 30.06.2025

F.No. S/49-93/CUS/MUN/24-25

1816

By Registered Post A.D/E-Mail.

To,
M/s. Mahendrakumar & Brothers,
Hemendra Chambers,
Grain Market,
Jamnagar - 361001



Copy to:-

1. ✓ The Chief Commissioner of Customs, Ahmedabad zone, Customs House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra
3. The Deputy/Assistant Commissioner of Customs, Customs House, Mundra
4. Guard File.