



सीमा शुल्क (अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20250671MN0000999DF4

क्र	फ़ाइल संख्या FILE NO.	S/49-233/CUS/AHD/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	AHD-CUSTM-000-APP-116-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.06.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. 12/AC/CH-Surat/Refund/2024-25 dated 12.09.2024 passed by Assistant Commissioner of Customs, Customs House, Magdalla Port, Surat
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s DCM Shriram Ltd. Unit: Shriram Alkalies & Chemicals, 749, GIDC Industrial Estate, Jhagadia, Bharuch, Gujarat - 393110.

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.	<p>सीमाशुल्क अधिनियम 1962 की धारा 129 डी (1) (यथा संशोधित) के अधीन निम्नलिखित ब्रेणियों 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।</p> <p>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.</p> <p>निम्नलिखित सम्बन्धित आदेश/Order relating to :</p> <p>(क) बैगेज के रूप में आयातित कोई माल।</p> <p>(a) any goods exported</p> <p>(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।</p> <p>(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.</p> <p>(ग) सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।</p> <p>(c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.</p>
3.	<p>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 :</p> <p>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 :</p> <p>(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।</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1,000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-</p> <p>(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</p>

	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 अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, 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 अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>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-</p> <p>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 -</p> <p>(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 रुपए.</p> <p>(ख) 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;</p> <p>(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; पाँच हजार रुपए</p> <p>(ब) 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 ;</p> <p>(भ) 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 रुपए.</p> <p>(स) 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</p> <p>(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 ।</p> <p>(द) 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.</p> <p>6. उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				

ORDER-IN-APPEAL

The present Appeal has been filed by M/s DCM Shriram Ltd., Unit: Shriram Alkalies & Chemicals, 749, GIDC Industrial Estate, Jhagadia, Bharuch, Gujarat 393110, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 12/AC/CH-Surat/Refund/2024-25 dated 12.09.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Customs, Customs House, Magdalla Port, Surat (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant filed a Bill of Entry No. 7668644 on 15.05.2020 for import of 30000 MT of Steam Coal of Indonesian origin (Non Coking) at Customs House, Surat, Magdalla Port. The goods were assessed to duty amounting to Rs 1,78,89,975/-, which was paid on 22.05.2020 and out of charge (OOC) was given on 23.05.2020. Out of the said quantity of 30000 MT, a quantity of 23577 MT was offloaded at Magdalla Port.

2.1 Subsequently, due to rough weather at Magdalla Port, the vessel was diverted to Bhavnagar Port, where the appellant filed another Bill of Entry No 8050318 dated 01.07.2020 for the remaining quantity, i.e. 6423 MT, and again paid duty amounting to Rs 38,16,919/- on 04.09.2020 for the said quantity. Thereafter, the Bill of Entry No. 7668644 dated 15.05.2020 was finally assessed on 16.02.2022 for the quantity of 23577 MTs involving Customs Duty amounting to Rs. 1,40,59,739/-.

2.2 The appellant had filed refund claim for Rs. 38,30,244/- on 14.03.2022, in respect of Bill of Entry No. 7668644, dated 15.05.2020, finally assessed on 16.02.2022. The Adjudicating Authority vide OIO No. 01/DC/SRT/REFUND/2022 dated 16.06.2022, read with Corrigendum dated 05.07.2022, has sanctioned the refund claim amounting to Rs 38,30,235/- and credited the refund amount to the Consumer Welfare Fund under Section 27 (2) of the Customs Act, 1962, on the grounds of unjust enrichment as the claimant failed to provide the supporting financial documents viz. Balance Sheet/ trial Balance Sheet etc.

2.3 Being aggrieved with the OIO No. 01/DC/SRT/REFUND/2022 dated 16.06.2022, read with Corrigendum dated 05.07.2022, the appellant had filed an appeal before the Commissioner (Appeals), Customs, Ahmedabad. The Commissioner (Appeals) vide Order-In-Appeal No. AHD-CUSTM-000-APP-462-23-24 dated 28.02.2024, inter alia observed that the principles of natural justice had been violated while passing the said OIO and so, he set aside the aforesaid OIO and allowed the appeal by way of remand to the adjudicating authority for passing a fresh order after considering the submissions made by the appellant.

2.5 On receipt of the said Order-In-Appeal No. AHD-CUSTM-000-APP-462-23-24 dated 28.02.2024, the adjudicating authority has taken up the matter for de novo adjudicating and called documentary evidence regarding unjust enrichment from the appellant. Personal Hearing was also conducted by the adjudicating authority in remand proceedings. Thereafter, the Adjudicating Authority passed the impugned order dated 12.09.2024. Extracts from the said Order are as under:

"5.3 I find that the CA has Certified that the incidence of duty of Rs. 38,30,244/- paid for import of aforesaid 6423 MT Steam Coal has not been passed on to the Consumer either directly or indirectly, the said mount has been shown as "Custom Duty Receivable" with the Customs Authorities in their books of accounts as per Annexure "A" separately attached. However, the requisite documents which was no submitted while deciding their first Refund Application, has still not submitted for further verification or as supporting evidence / documents. Further, the case laws cited by the appellants in their written submission are not squarely applicable in the instant case as the facts and the circumstances are not same.

5.4 During the personal hearings held on 11.06.2004 and 23.07.2004, Ms. Patwa was requested to submit the audited Balance Sheet and Profit and Loss Account, as these documents are essential for evaluating the case. She agreed to provide these documents. Two time personal hearing was granted to the appellant and therefore, sufficient time was given to submit financial records.

Number of letters were been issued to M/s DCM Shriram requesting

for submission of the required financial documents. However, till date, apart from the Chartered Accountant (CA) Certificate, the appellant has not submitted other relevant documents, such as the audited Balance Sheet and Profit and Loss Account. These documents are crucial to ascertain as to how the refund claim amount is treated in their financial records, including whether it is categorized as 'Customs Receivables' or otherwise."

As the appellant has not submitted the audited Balance Sheet and Profit & Loss Account, the adjudicating authority presumed that the appellant has not met with the burden of proving that there has been no unjust enrichment from the refund amount. So, vide impugned order, the refund of Rs. 38,30,235/- has been sanctioned, but ordered to be credited to Consumer Welfare Fund under Section 27(2) of the Customs Act, 1962.

2.6 Being aggrieved with the impugned order, the Appellant has filed the present appeal.

3. As the appeal is against rejection of refund claim, no pre-deposit is required to be made by the appellant under the provisions of Section 129E of the Customs Act, 1962. In the Form CA-1, the date of communication of the impugned order dated 12.09.2024 has been shown as 21.09.2024 and the appeal has been received in this office on 19.11.2024. As the appeal has been filed within normal period of 60 days, as prescribed under Section 128(1), it has been taken up for disposal on merits.

SUBMISSIONS OF THE APPELLANT:

4.1 The appellant has submitted that they had already paid the full customs duty on the entire consignment under reference. That it was to be initially unloaded at the Magdalla Port, but due to bad weather conditions, a part of the same consignment was under compulsion unloaded at Bhavnagar. That the Appellant under compulsion had to repay the customs duty for the part of consignment that was unloaded at Bhavnagar. That the Appellant had filed for the refund of customs duty that was additionally paid. That the Appellant has also submitted the CA certificate wherein it is specifically mentioned that the incidence of tax has not been passed and refund of the amount is to be claimed.



4.2 That where the duty itself has been paid twice, there will be no incidence where any subsequent buyer will end up paying duty twice in trade parlance. That hence what is impossible in trade cannot be a ground for dispute even by the department as it is beyond possibility.

4.3 The Assistant Commissioner has nowhere even disputed the validity of the Chartered Accountant Certificate and Statement of Account submitted. That the once the Assistant Commissioner has not disputed the CA certificate and the statement that burden of duty has not been passed over to any buyer, he has proceeded to presume that merely because Balance Sheet and Audited Financial Statements were not provided, it means unjust enrichment is applicable. It is ironical to note that no person in this world as a buyer will pay double duty when it is a commercial transaction. That the impugned Order suffers from arbitrariness and legal infirmity and also does not meet the basic expectation of reasonableness that CA certificate which has been prepared after verifying the record and it has not been disputed. That the adjudicating authority has not given any categorical finding that unjust enrichment is applicable, but simply concluded the refund application to be unjust enrichment because the Balance Sheet and Audited Financial Statements were not provided by the Appellant.

4.4 It is imperative to note that the Appellant is a Public Limited Company and the Audited Financial Statements are readily available in the public domain. Therefore, unjust enrichment cannot be even presumed at the first place. That furthermore, there is not even a single finding by the Assistant Commissioner except the non-availability of the documents is a sole ground of rejection of refund especially when CA Certificate along with Statement of accounts of a Public listed company were given and his presumption is beyond the possibility in as much in this world no buyer will pay double duty for same goods.

4.5 That there is plethora of rulings wherein Constitutional Courts have even considered the credibility of CA certificate unless the content of such certificate is disputed which has not been done in this case in this first place in the impugned order. That during the second hearing, the advocate for the Appellant categorically wrote that ".....CA certificate as an adequate proof to prove



that the incidence of tax has not been passed.". That the Assistant Commission has not given any negative finding in the impugned order. That above all, the department has already addressed this issue in the letter dated 15.06.2020 to the effect that the entire Customs duty has been paid by the Appellant. The relevant portion of the letter dated 15.06.2020 is reproduced below:

"...Since, the Customs duties for 30,000 MTs., has already been paid at Magdalla Port the remaining undischarged quantity 6422.986 MTs., may be permitted to discharge at Bhavnagar Port..."

4.6 The appellant further mentioned that there is no dispute for the following:

- A. Description of Goods
- B. Quantity of Goods
- C. Value of Goods
- D. Amount of Customs Duty Paid



Hence, in absence of any such dispute existing, neither duty was payable at the first place and even if it has been paid then it cannot be construed to have been hit by the incidence of unjust enrichment. Since, no person can demand or any person will pay double duty for one and same goods, it is beyond imagination as well.

4.7 That the Hon'ble Supreme Court in International Conveyors Limited v. Commissioner of Central Excise and Customs [(2014) 15 SCC 706] has granted the refund of the customs amount to the assessee as the incidence of duty was not passed on. That the Hon'ble Supreme Court in Union of India and others v. Solar Pesticides Pvt. Ltd. and Another [(2000) 2 SCC 705] held that in instances where the excess duty is paid and the incidence of the duty is not further passed on, then the amount shall be refunded under Section 27(2) of the Customs Act, 1962 to the claimant. That neither the quantum of customs refund claimed have been disputed nor the legality of the refund claimed has been disputed. That there was no unjust enrichment by the Appellant. That the Appellant has fulfilled the ingredients for the grant of refund under Section 27 of the Act.

4.8 That furthermore the incidence of tax was not passed on to the customers. Rather, passing of incidence of customs duty cannot arise at all. That it must be noted that it is not a case where duty was paid once, but it is a case where for one goods, customs duty has been paid twice at the time of import. No buyer can even pay duty twice the quantum of existing duty structure even if it is demanded from any seller. In the light of foregoing, the Appellant submitted that they are eligible for the refund of claimed amount along with interest.

PERSONAL HEARING:

5. Personal hearing was granted to the Appellant on 18.06.2025, following the principles of natural justice. Ms. Hiteshi Rajan Desai, Advocate appeared for the hearing in virtual mode, i.e. through video conference. She reiterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

6. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner of Customs, Customs House, Magdalla Port, Surat, and the written as well as verbal submissions made by or on behalf of the appellant.

6.1 I find that following issues required to be decided in the present appeal which are as follows:



- (i) Whether the Adjudicating Authority's finding regarding "unjust enrichment" is legally sustainable, particularly in light of the CA certificate and the unique facts of the case where duty was admittedly paid twice.
- (ii) Whether the impugned order has adequately followed the directions of the previous remand order and provided a reasoned justification for crediting the refund to the Consumer Welfare Fund.

6.2 The fundamental principle underlying Section 27 of the Customs Act, 1962, particularly the doctrine of unjust enrichment, is to prevent a claimant from profiting by claiming a refund when the burden of duty has

already been passed on to the consumers. However, the application of this doctrine cannot be mechanical.

6.3 In the present case, the core fact, undisputed by the Customs Department, is that the Appellant paid Customs duty twice on the same quantity of imported coal due to unforeseen circumstances (i.e. diversion of vessel from Magdalla Port to Bhavnagar Port due to bad weather). This is not a scenario of a disputed classification or valuation, but a clear case of double payment of duty. In such a unique factual matrix, where duty is demonstrably paid twice on the same goods by the same importer, the presumption of unjust enrichment loses much of its force. It defies commercial logic and trade parlance for a buyer to willingly pay the same duty twice.

6.4 Furthermore, the Appellant has furnished a Chartered Accountant's Certificate explicitly stating that the incidence of duty has not been passed on to the customers and that the amount is shown as "Custom Duty Receivable" in their books of accounts. The adjudicating authority's mere assertion that this certificate is "insufficient" without providing specific reasons or contradictory evidence is arbitrary. The Hon'ble Supreme Court in Mafatlal Industries Ltd. v. Union of India [1997 (89) E.L.T. 247 (S.C.)] recognized that the burden of proving that the incidence of duty has been passed on is on the Revenue, if there is positive evidence from the claimant that it has not been. A certificate of Chartered Account is generally accepted as valid documentary evidence for this purpose. In the impugned order, no reason has been given as to why the said certificate is not valid.

6.5 Moreover, the Supreme Court in International Conveyors Limited v. Commissioner of Central Excise and Customs [2014 (15) SCC 706] and Union of India and others v. Solar Pesticides Pvt. Ltd. and Another [2000 (2) SCC 705] has consistently held that where excess duty is paid and the incidence is not passed on, the amount is refundable. The Appellant's statement that they are a Public Limited Company and their financial statements are public also lends credibility to their assertion. The adjudicating authority's demand for additional "audited financial statements" when a CA certificate covering the specific refund claim and ledger entries showing the amount as receivable was already provided, appears to be an overly technical requirement in a clear case of double payment.

6.6 The previous Order-in-Appeal dated 28.02.2024 clearly remanded the matter for a "fresh hearing" and directed the adjudicating authority to pass a "speaking and reasoned order" after "following the principles of natural justice and legal provisions.". However, the impugned order, despite the remand, still primarily relies on the "presumption of unjust enrichment" and makes a generalized assertion that the CA certificate is insufficient without providing specific reasons or rebutting the detailed explanations and judicial precedents submitted by the Appellant. This indicates a failure to provide a truly "speaking and reasoned order" as directed by the appellate authority.

6.7 A reasoned order implies engaging with the arguments and evidence presented by the Appellant, especially the specific facts of double duty payment and the CA certificate. The Appellant has demonstrated that the specific facts (double payment) and evidence (CA certificate) were not adequately considered, amounting to a non-compliance with the remand directions.

6.8 Article 265 of the Constitution of India mandates that "no tax shall be levied or collected except by authority of law." In a situation where the same goods have admittedly suffered duty twice, the excess collection of duty on the first Bill of Entry is without the authority of law, and the Appellant is entitled to its refund.


6.9 The circumstances of the case clearly show that the Appellant was compelled to pay duty again due to port diversion, which was beyond their control. To credit such a clearly established excess payment to the Consumer Welfare Fund would be against the spirit of law.

6.10 The present case is regarding refund of duty paid twice on the same goods i.e. 6423 MT of Steam Coal. In the impugned order, there is discussion about Certificate of Chartered Accountant certifying inter alia that the incidence of duty of Rs. 38,30,244/- paid for said quantity has not been passed on to customers either directly or indirectly, and the said amount has been shown as Customs Duty Receivable in the books of account (Para 4.4 of the impugned order refers). There is no finding of the adjudicating authority as to how the said Certificate of Chartered Account is not acceptable. I find that though the



adjudicating authority has sanctioned the refund, he ordered to credit the refund amount to Consumer Welfare Fund only due to the reason that the appellant has not produced Audited Balance Sheet and Profit & Loss Account Statement. In such a situation, I am of the view that a Certificate of Chartered Accountant is valid in absence of any contrary evidence.

6.11 In this regard, I rely upon following case laws:

(i)

(2022) 1 Centax 182 (Tri.-Cal)/2023 (383) E.L.T. 69 (Tri.-Cal) [13-09-2022]

IN THE CESTAT, EASTERN BENCH, KOLKATA [COURT NO. II]

Steel Authority of India Ltd.

Versus

Commissioner of CGST & CX, Bolpur

Final Order No. 75522/KOL/2022 in Appeal No. E/76574/2018, decided on 13-9-2022

Excise : Refund claim is not hit by unjust enrichment when certificate of Chartered Accountant showed that incidence of duty has not been passed on to consumer.

Refund - Unjust enrichment - Excise duty paid twice by mistake on sales made to Rail Wheel Factory - Certificate of Chartered Accountant showed that incidence of duty not passed on to consumer - Factum of excess payment as well as its non-recovery reflected from original as well as supplementary invoices - Refund claim not hit by unjust enrichment - Section 11B of Central Excise Act, 1944. [paras 1 and 10]

(ii)

2007 (210) E.L.T. 529 (Tri.-Del) [13-11-2006]

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

GOPI KRISHNA PROCESSORS PVT. LTD.

Versus

COMMISSIONER OF C. EX., JALANDHAR



Final Order Nos. 1613-1616/2006-SM(BR)(PB), dated 13-11-2006 in Appeal Nos. E/ 5373-5376/04-NB(S)

Refund - Unjust enrichment - Evidence - Chartered Accountant stated that duty demanded deposited through TR6 Challans and shown in books of accounts as Excise Recoverable and the amount was not recovered from customers - Certificate indicates that impugned amount not debited to trading and profit & loss account and the same not forming part of cost of finished products - Chartered Accountant being an expert having training and knowledge of accounting system, his certificate not to be overlooked - Enough evidence shown for not passing on burden of duty to customers - Refund admissible - Section 11B of Central Excise Act, 1944. [2003 (161) E.L.T. 452 (Tribunal) and 2006 (196) E.L.T. 61 (Tribunal) followed]. [paras 6, 7, 8, 9, 14]

(iii)

2007 (219) E.L.T. 505 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

IPCA LABORATORIES LTD.

Versus

COMMR. OF CUSTOMS (ACC & IMP), MUMBAI

Final Order No. A/843/2007 -WZB/6-IV (SMB), dated 28-5-2007 in Appeal No. C/84/2007

Refund - Unjust enrichment - Applicability of - Certificate of Chartered Accountant proving that appellant not passed on incidence of duty to ultimate buyer - In absence of any evidence to contrary, principle of unjust enrichment not applicable and refund admissible - Section 27 of Customs Act, 1962. [2007 (211) E.L.T. 295 (Tribunal); 2007 (210) E.L.T. 529 (Tribunal) relied on]. [para 4]

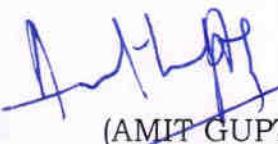
7. In view of the above discussion and case laws, I find that the impugned order passed by the adjudicating authority is legally unsustainable. The Appellant has successfully demonstrated that the incidence of the duty, claimed as refund, has not been passed on by them to buyer or any other person.

8. Therefore, in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

ORDER

8.1 I hold that the refund amount of Rs. 38,30,235/-, which is already sanctioned by the adjudicating authority, cannot be credited to the Consumer Welfare Fund but payable to the appellant under the Proviso (a) to Sub-section (2) of Section 27 of the Customs Act, 1962.

8.2 I set aside the impugned Order-in-Original No. 12/AC/CH-SURAT/Refund/2024-25 dated 12.09.2024 passed by the Assistant Commissioner of Customs, Customs House, Magdalla Port, Surat, and allow the appeal filed by M/s. DCM Shriram Limited (Unit: Shriram Alkalies & Chemicals) with consequential relief in accordance with law.


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

F.No. S/49-233/CUS/AHD/2024-25

Date: 30.06.2025

By E-Mail (As per Section 153(1) of the Customs Act, 1962)

To

M/s. DCM Shriram Limited,
Unit: Shriram Alkali & Chemicals,
749, GIDC Industrial Estate,
Jhagadia, Bharuch, Gujarat-393110.

(email: chemicalsenquiry@dcmshriram.com rnsahu@dcmshriram.com)



Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoaahm-guj@nic.in)
2. The Principal Commissioner of Customs, Ahmedabad. (email: cus-ahmd-guj@nic.in ; rra-customsahd@gov.in)
3. The Deputy/Assistant Commissioner of Customs, Custom House, Magdalla Port, Surat. (email: magdallaport.surat@gov.in customhousesurt@gmail.com)
4. M/s. AMLEGALS, Advocates & Advisors, Ahmedabad. (email: hiteashi.desai@amlegals.com himanshi.patwa@amlegals.com)
5. Guard File.

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