



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250771MN000000DC28

क	फ़ाइल संख्या FILE NO.	S/49-410/CUS/AHD/23-24
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-131-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
द	दिनांक DATE	04.07.2025
इ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 05/AC/DAP/APOLLO/DBK-RFD/2023-24, dated 21.11.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	04.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Apollo Tyres Limited, Village - Limda, Taluka - Waghodia, Vadodara – 391760



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.
	निम्नलिखित सम्बन्धित 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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मर्दों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ भात्र)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 ब्याज, लगाया गया दंड की राशि और रुपए 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 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.	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 रुपए या उससे कम हो तो एक हजार रुपए.				
(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;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए				
(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 ;				
(द)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रुपए से अधिक हो तो; दस हजार रुपए.				
(क)	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				
(ख)	इस आदेश के विरुद्ध अधिकरण के मामले, 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।				
(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.				
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. Apollo Tyres Limited, Village – Limda, Taluka, Waghodia, Vadodara – 391760 (hereinafter referred to as 'the Appellant') have filed the present appeal challenging the Order-In-Original No. 05/AC/DAP/APOLLO/DBK-RFD/2023, dated 21.11.2023 (hereinafter referred to as 'the impugned order') passed by Assistant Commissioner, Customs, ICD - Dashrath (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the Appellant have filed Drawback claim along with all related documents in respect of re-export of duty paid under Section 74 of the Customs Act, 1962.

2.1 The Appellant had imported 37,800 Kgs. of SOLUTION SYTRENE BUTADIENE RUBBER SOL – 5360H falling under CTH 40021990 from M/s. Kumho Petrochemical Co. Ltd., East Wing, 14th Floor, Signature Towers, 100 Cheonggyecheon - RO, Jung – Gu, Seoul – 100230, South Korea, as detailed in the Table below. At the time of importation they had paid Customs Duty, Social Welfare Surcharge & IGST amount. Subsequently, they re-exported the aforesaid goods imported vide Bill of Entry No. 9993292, dated 13.08.2022 as un-used due to quality rejection to M/s. Kumho Petrochemical Co. Ltd., East Wing, 14th Floor, Signature Towers, 100 Cheonggyecheon - RO, Jung – Gu, Seoul – 100230, South Korea under Section 74 of the Customs Act, 1962 and LUT as detailed in the Table below:-

Shipping Bill No. & Date	Invoice No. & Date	LEO Date	Bill Entry of & Date	Out of Charge Date	Challan No. & Date	Total Duty in INR	Expected Refund Value in INR
1595807, dated 07.06.2023	REEXPAP 022141 dated 16.01.2023	01.07.2023	9993292, dated 13.08.2022	22.08.2022	2040488799, dated 16.08.2022	2834316	27,77,629/-

2.2 The Appellant had claimed total Drawback of Rs. 27,77,629/- (98% of import Customs Duty under Section 74 of the Customs Act, 1962), as they had not used the goods. They submitted the below mentioned documents in this regard:-

- (i) Form of Claim of Drawback Annexure-II under Section 74 of the Customs Act, 1962
- (ii) LEO Copy of the Shipping Bill No. 1595807, dated 07.06.2023
- (iii) OOC copy of the Bill of Entry No. 9993292, dated 13.08.2022
- (iv) Copy of proof of payment of import duty, i.e., copy of challan as detailed in the Table above
- (v) Copy of Export Invoice and Packing List
- (vi) Copy of Import Invoice / Packing List
- (vii) Copy of Bill of Lading for exported goods



(viii) Copy of Certificate dated 11.05.2023, issued by ICICI Bank

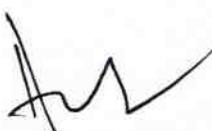
2.3 The adjudicating authority has held that the Appellant had already taken the credit of IGST amounting to Rs. 18,27,941/- for the Bill of Entry No. 9993292, dated 13.08.2022. Hence, the refund is admissible only for remaining amount of Drawback, i.e., Rs. 9,49,688/- (Rs. 27,77,629/-, i.e., @ 98 % of the paid Customs Duty amounting to Rs. 28,34,315/- - Rs. 18,27,941/-). Thus, the adjudicating authority has held that the Drawback on re-export of duty paid import goods is admissible to the Appellant for Drawback amounting to Rs. 9,49,688/- and remaining amount of Rs. 18,27,941/- is liable for rejection.

2.4 Accordingly, the adjudicating authority vide the impugned order has passed the order has detailed below:

i. He has sanctioned the Drawback amounting to Rs. 9,49,688/- to the Appellant and rejected the remaining Drawback amounting to Rs. 18,27,941/- for the Shipping Bill mentioned at Table above, towards re-export of duty paid imported goods under the provisions of Section 74 (1) of the Customs Act, 1962;


Being aggrieved with the impugned order passed by the Adjudicating Authority, the Appellant have filed the present appeal. They have, inter-alia raised various contentions and filed detailed submissions as given below in support of their claims:

- The impugned order is against facts, law, bad in law, unjust and unfair, and is, therefore, liable to be set aside.
- The adjudicating authority has failed to consider the facts in its proper perspective;
- The IGST availed was subsequently reversed / paid back to the Government upon quality rejection and re-export;
- They have imported the subject goods vide Bill of Entry No. 9993292, dated 13.08.2022 and accordingly availed credit in the month of September, 2022. However, subsequently upon quality rejection, IGST so availed was reversed accordingly GSTR-3B was filed for the month of April, 2023 taking impact of such reversal. Subsequently, these goods were re-exported vide Shipping Bill No. 1595807, dated 07.06.2023;
- The Superintendent of CGST, & CE, Range – II, Division – VII also verified their GST records and issued a letter bearing F. No. R-II/Div-VII/Misc Corp/2022-23, dated 11.10.2023 certifying that the ATL had availed ITC of said Bill of Entry in the month of September, 2022 and reversed it in the month of April, 2023;
- The adjudicating authority rejected the IGST refund on the sole ground that they had already taken the credit of IGST amounting to Rs. 18,27,941/- for the said Bill of Entry and only remaining amount of DBK should be allowed;



- It is evident that the adjudicating authority has conveniently ignored the fact that such IGST credit taken in September, 2022 was subsequently reversed at the time of quality rejection in the month of April, 2023. Such reversal of credit has also been certified by the Range Superintendent post verification of corresponding GST Returns;
- Since the IGST credit taken has been paid back to Government by way of reversal, which is also certified by the Range Superintendent, refund of IGST should also be allowed;
- That even if, refund calculated at Para 7 of the impugned order and granted amount of Rs. 9,49,688/- in respect of BCD and SWS has been incorrectly calculated by subtracting total IGST paid instead of 98% of IGST from refund applied amount, i.e., (Rs. 27,77,629 – Rs. 18,27,941/-);
- Accordingly, the correct BCD and SWS refund ought to have been Rs. 9,86,247/-, calculated as under:

*Total Refund applied – IGST refund applied = Rs. 27,77,629 – Rs. 17,91,382
 Thus, there is short payment of BCD and SWS refund as well to the extent of Rs. 36,559/-*

- In view of the above, the impugned order is liable to be set aside and the lance Drawback refund of 98% of duty paid on the imported material should be allowed;

4. Personal hearing in the matter was held on 25.06.2025 in virtual mode. Shri Himanshu Chawla, Group Manager – Indirect Taxation, appeared for hearing on behalf of the Appellant. He had reiterated the submissions made at the time of filing of appeal.

5. I have carefully gone through the appeal memorandum as well as records of the case and the submissions made by the Appellant during the course of hearing, oral as well as written. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority rejecting the remaining Drawback amount for the Shipping Bill No. 1595807, 07.06.2023 towards re-export of duty paid imported goods under the provisions of Section 74 (1) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 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 08.01.2024 against the impugned order dated 21.11.2023 received by the Appellant on 30.11.2023, 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 against refund of Drawback amount, pre-deposit under the provisions of Section 129 E is not required. As the appeal have been filed within the stipulated time-limit, the said appeal have been admitted and being taken up for disposal on merits.



6. The Appellant have mainly contended that since the IGST credit taken have been paid back to Government by way of reversal, which was certified by the Range Superintendent, refund of the IGST should have been allowed. On perusal of the impugned order, it is observed that the adjudicating authority in the impugned order has held that:-

"A letter bearing F. No. R-II/Div-VII/Misc Corp/2022-23, dated 11.10.2023 has been received from the Superintendent of CGST & CE, Range-II, Division – VII, wherein it has been mentioned that:

"The assessee M/s. Apollo Tyres Ltd. (the claimant) has taken the credit of the said BE in the month of Sep-2022 and reversed in the month of April'2023. During the verification of GSTR-3B of the both months and the submitted annexure (list of credit taken for imported goods), it is found that the assessee has taken the credit off IGST amount of Rs. 18,27,941/- for the BE No. 9993292 dated 13.08.2022 in September, 2022 and utilized it for the payment of IGST in the same month.

From the above para, it is observed that the claimant has already taken the credit of IGST amounting to Rs. 18,27,941/- for the said BOE i.e. 9993292 dated 13.08.2022. Hence, the refund is admissible only for remaining amount of DBK i.e. Rs. 9,49,688/- (Rs. 27,77,629/- i.e. @ 98% of paid customs duty amounting to Rs. 28,34,315/- - Rs. 18,27,941/-)"

7. It is observed that the adjudicating authority has held that the Appellant has already taken the credit of IGST amounting to Rs. 18,27,941/- for the said Bill of Entry No. 9993292, dated 13.08.2022. On perusal of the case records and submission of the Appellant, it is observed that the Appellant have subsequently reversed the credit. The said fact have been certified by the Range Superintendent vide his letter dated 11.10.2023. However, it is observed the adjudicating authority in the impugned order has not recorded any reasoning or findings as to how the Drawback is inadmissible in the IGST amount, which the Appellant have reversed. Thus, the impugned order insofar as it relates to the rejection of drawback on the IGST amount, is concerned is not a speaking order and suffers from the legal infirmity on this count.

8. In view of the discussion made above, I am constraint to remit the present appeal to the adjudicating authority with a direction to pass speaking order as to how the Drawback is inadmissible in the IGST amount, which the Appellant have reversed. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub-section 3 (b) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of natural justice. 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 Pvt. Ltd.

[2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri.-Del)] holding 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.

9. In view of above, I set aside the impugned order and allow the appeal filed by the Appellant by way of remand to the adjudicating authority for passing fresh order after considering the submissions made by the Appellant in the present appeal on record. The Adjudicating Authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provisions. No view on merits has been expressed in this order.

10. The appeal preferred by the Appellant is allowed by way of remand.



F. No. S/49-410/CUS/AHD/2023-24

9086


 (Amit Gupta)
 Commissioner (Appeals),
 Customs, Ahmedabad

Date: 03.07.2025
 04

By Registered post A.D

To,
 M/s. Apollo Tyres Limited,
 Village - Limda,
 Taluka - Waghodia,
 Vadodara – 391760

M/s. Apollo Tyres Limited,
 Plot No. 7, Institutional Area,
 Sector – 32,
 Gurugram,
 Haryana

सत्यापिता/ATTESTED

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

Copy to:

- 1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
- 2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
- 3. The Assistant Commissioner, Customs, ICD – Dashrath, Vadodara.
- 4. Guard File.