सत्यमेव जयते

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 - 20250871MN000000E8C5

क	फ़ाइल संख्या FILE NO.	S/49-203/CUS/JMN/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):	JMN-CUSTM-000-APP-229-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	05/CUS-REF/2024-25 dated 04.04.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Kamdar & Associates, Plot No. 03, Ship Recycling Yard, Alang, Dist – Bhavnagar.

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 है.

	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)	बैगेज़ 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 दस्तावेज़ों 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 मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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/-
(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 :

	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय 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 हज़ार रुपए.
(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 हज़ार रुपए
(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 हज़ार रुपए.
(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 Kamdar & Associates, Plot No. 03, Ship Recycling Yard, Alang, Dist – Bhavnagar (hereinafter referred to as "the appellant") have filed an appeal in terms of Section 128 of the Customs Act, 1962 against the Order-in-Original No. 05/CUS-REF/2024-25 dated 04.04.2024 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Customs Division, Bhavnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, having their Ship Recycling Yard at 03, Alang Ship Recycling Yard, Alang - 364081, Dist – Bhavnagar, had imported one vessel MV JAOHAR UK for breaking up/recycling and filed Bill of Entry No. 5063071, dated 26.09.2019 under Section 46 of the Customs Act, 1962. They had self-assessed the goods viz. Vessels for breaking under CTH 89.08, Bunkers under CTH 27.10 & Consumables under CTH 98.05 and paid the assessed customs duty.

2.1 There were some dispute with regard to assessment of customs duty on the Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub. Oil) contained in Bunker Tanks inside/outside the engine room of the vessel. The appellant claimed that Fuel and Oil contained in Bunker Tanks inside/outside the engine room of the vessel was to be assessed to duty under CTSH 89.08 along with the vessel. The Department was of the view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTH i.e., Chapter 27. Thereafter, the subject Bill of Entry was assessed provisionally for want of original documents.

2.2 Further, Hon'ble CESTAT, Ahmedabad, vide its Order No. A/11792-11851/2022, dated 17.10.2022/01.12.2022 had held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel for breaking up. Further, in view of the aforesaid order of the Hon'ble CESTAT, the Assistant Commissioner, Customs Division, Bhavnagar vide Final Assessment Order No. 347/2499730/SBY/2023-24, dated 02.01.2024 held that Bunker Tanks containing oil are to treated as part of vessel's machinery and the Oils contained in them are to be classified under CTH 8908 along with the vessel, as covered under Para 2(b) of Circular No 37/96 – Cus, dated 03.07.1996. The Bill of Entry was finally assessed vide Final Assessment Order No. 347/2499730/SBY/2023-24, dated 02.01.2024 passed by the Assistant Commissioner, Customs Division, Bhavnagar. Consequently, the appellant had filed refund claim which was decided vide the impugned order.

2.3 The adjudicating authority on preliminary scrutiny of the refund claim observed that the refund application was not accompanied with the documentary evidence in support of the appellant's claim that the incidence of duty (claimed as refund) had not been passed on to any other person. The appellant was requested to submit the necessary documentary evidence that the incidence of duty (claimed as refund) had not been passed on to any other person. The appellant did not submit any documentary evidence in support of their claim that the incidence of duty (claimed as refund) had not been passed on to any other person. Therefore, the adjudicating authority has sanctioned the refund claim of Rs. 93,669/- in terms of Section 27 of the Customs Act, 1962 and credited the same to the consumer welfare fund.

3. Being aggrieved with the impugned Order, the appellant has filed the present appeal contending as under;

- The act of crediting the sanctioned refund amount in to the so called Consumer Welfare Fund of the department is not genuine and correct. The appellant had sold out the disputed stock of bunkers at very less price prevailing at the time and sale/ removal of disputed bunkers and too, before starting of hot breaking activities upon the vessel under reference. The appellant had sold out the disputed stock of bunker under cover of various Sales Invoices which had been issued at the very less price than considered the same at the time of provisional assessment of the bill of entry. Thus in the present case the question of importing the concept of as to why the sanctioned refund amount should not credited in to the Consumer Welfare Fund, is not coming in to picture.
- The whole purchase price of the ship under reference had never been increased decreased at any stage i.e. either at the time of Provisional Assessment or making the Final Assessment on the very ground that the purchase price/transaction value as considered by the department had not either decreased or increased so far as the transaction of the vessel under reference has been made in US Dollar as agreed upon in the above referred MOA. The sanctioned refund claim has been wrongfully credited in to the so called Welfare Fund.
- The ground considered for crediting in to the Welfare Fund appears to have been consider/taken in pursuance of the respective assessed to Income Tax Return. This Income Tax Return has no direct nexus with the crediting such sanctioned refund amount in to the so called Welfare Fund. The appellant had sold out the disputed stock of bunker at very low price and this price has direct nexus with the crediting such

sanctioned refund amount in the above Welfare Fund. This Welfare Fund has a special character in understating of concept of crediting in to so called Welfare Fund and having no nexus with the present refund claim for this contention the appellant fully apprised that in the present case, the concept of crediting such sanctioned refund amount appears not to have been true, correct and genuine but imported without any authority of law. This gross Income Tax value is nothing but pertaining to Commercial Business carried out by the Appellant in or in relation to the ends of sales of such goods in the open market.

- The department had also erred in making provisional assessment by wrongfully converting such value of the bunker in US Dollar at the time of making provisional assessment and accordingly no nexus with the calculation of such refund amount and this calculation in Rupees was also inclusive of the purchased price of the ship. This price in US Dollar appears to have been wrongfully considered in making credit of the sanction refund amount to the Welfare Fund read with such concept of transaction value. From these submissions, it is clear that the appellant had not collected the incidence of duty from such purchaser of the disputed stock of bunkers which had been started to sale in to the local market after fulfilling the provisions of Section 46 of the Customs Act, 1962. Therefore, the act of Adjudicating Authority in crediting the sanctioned refund amount in to the so called Welfare Fund is not true correct and proper but to be set aside.
- Further, the appellant submitted that the appointed Chartered Accountant has clearly certified that in the refund claim, the question of passing or not passing of incidence of duty under refund was not arise. In this regard the appellant relied upon the various settled case laws wherein the concerned authority has clearly held that "in such cases", the question of unjust enrichment" does not arise.
  (i) 2015 (327) ELT 13 (Mad); Commissioner of C. Ex., Chennai-l,
  (ii) 2017 (348) ELT 537 (Tri. -Chennai); Mennekes Electric India P. Ltd. v/s Commissioner of Cus., Chennai-II
  (iii) 2018 (360) ELT A204 (Bom.); Commissioner v/s Tata Motors Ltd
  (iv) 2020 (371) ELT 542 (Chan); Gaurav Enterprises v/s Commissioner of Customs Amritsar
  (v) 2022 (60) G.S.T.L. 48 (Del); Rambagh Palace Hotel Pvt. Ltd. v/s Commissioner ofC. Ex. & GST, Jaipur
  (vi) 2013 (294) E. L. T. 320 (Tri- Bang.) in case of VXL Instruments Ltd. v/s Commissioner of Customs, Banglore

(vii) 2015 (317) E.L.T. 637 (Tri. Del) in case of Business Overseas Corporation v/s C. C. (Import & General), New Delhi

(viii) 2017 (48) S. T. R. 298 (Del) in case of Munch Food Products Ltd. v/s Commissioner

- In view of the above stated grounds of appeal it is clearly establish that in the present case, the question of invoking the concept of unjust enrichment does not arise. Therefore, the sanctioned refund amount has wrongfully credited in to the so called Consumer Welfare Fund/Account.

4. Shri Rahul Gajera, Advocate, appeared for personal hearing 25.06.2025 in physical mode. He reiterated the submissions made at the time of filing appeal and also submitted a common written submission wherein he submitted that:

- It is evident from the Bill of Entry and the Appellant's Sales Invoices, that the price at which the Appellant sold the imported Bunkers is much below the import price/value of the Bunkers on which the duty was assessed. Therefore, the Appellant has not been able to even recover the import price of the Bunkers, much less the duty paid thereon. Consequently, the question of the Appellant having passed on and recovered from the buyers, the duty paid on the Bunkers does not arise. Clearly, the burden of the said duty has been borne by the Appellant and has not been passed on to the buyers. A perusal of the Appellant's Sales Invoices would show that the Appellant has only recovered the GST payable on the local sales and not the import duty paid on the Bunkers.

- It is settled law as laid down in the following judgments that debit of the duty amount to expenses, without corresponding addition in the import price to arrive at the local sale price, means that Appellant has absorbed and borne the said amounts and it cannot lead to the conclusion that the Appellant has passed on the incidence thereof. The appellant relied upon the following case laws:

(i) CCE v Flow Tech Power-2006 (202) ELT 404 (Mad): Para 3

(ii) Elantas Beck India Ltd v CCE – 2016 (339) ELT 325 (Tri. - Mumbai): Para 5

(iii) Birla Corporation Ltd v CCE – 2008 (231) ELT 482: Para 5

(iv) Bharat Kumar Indrasen Trading P. Ltd v CC-2018 (2) TMI 1574: Paras 7 and 8.

(v) Shyam Coach Engineers v CCE – 2024 (1) TMI 245: Paras 5.7, 5.8 and 6.

In the present case, not only has the Appellant not added the duty amount to the import price to arrive at the local sale price, but in fact, the local sale price is even below the import price on which the duty is assessed. Consequently, as laid down in the aforesaid judgments, merely because the duty was debited to expenses, it cannot be said that the incidence thereof was passed on to the buyers.

- The decision in Pr. Commr of CC v Sachdev Overseas Fitness P. ltd and Nityasach Fitness P. Ltd- 2023 (6) TMI 161-CESTAT-Hyderabad relied upon by the Assistant Commissioner is that of a Single Member of the Tribunal, whereas the decisions referred to herein above are of the Hon'ble High Court and Division benches of the Tribunal. Moreover, in the said decision relied upon by the Assistant Commissioner, unlike the present case, it was not the case of the importer had imported goods has been sold below the import price. The said decision, therefore, cannot beapplied to the present case.

- The amount excess deposited during the provisional assessment/pendency of a classification dispute is a revenue deposit, and not a final payment of duty. The refund of such revenue deposits is not governed by Section 27 of the Customs Act, 1962, and hence refund cannot be denied on the ground of applicability of doctrine of unjust enrichment provided therein.

- It is submitted that in the cases where duty on fuel and oil were deposited without lodging a formal protest, the finalization of assessments was nevertheless carried out pursuant to the judgment of the Hon'ble Supreme Court in the case of Mahalaxmi Ship Breakers by which issue of classification was put to rest in favour of ship breaking units. Therefore, excess amount arising out of such final assessment should be treated as payments made under mistake of law and such amounts do not retain the character of duty, and the bar of unjust enrichment under Section 27 would not apply to such deposits.

- It is a common practice that fuel and oil available on board of ship are necessarily required to be removed for the purpose of hazardless and efficient operation of ship breaking. It is submitted that bar of unjust enrichment do not apply to such items removed below cost as a distressed sale.

➢ The above proposition of law is well settled by various judgments. The appellant craves leave to submit the same during hearing.

5. Before going into the merits of the case, it is observed that the date of communication of the impugned order as per appeal memorandum is 04.04.2024 and the present appeal was filed on 16.07.2024, i.e., after 103 days. In this regard, I have gone through the provision of limitations for filing an appeal as specified under Section 128(1) of the Customs Act, 1962. The same is reproduced hereunder:

"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.]"

5.1 As per the legal provisions under Section 128 of the Customs Act, 1962, 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.

5.2 It will also be relevant to refer to the judgment of Hon'ble Supreme Court in case of Singh Enterprises – [2008 (221) E.L.T. 163 (S.C.)], wherein the Hon'ble Apex Court had, while interpreting the Section 35 of the Central Excise Act, 1944, which is pari materia to Section 128 of the Customs Act, 1962, held that the appeal has to be filed within 60 days, but in terms of the proviso, further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The relevant para is reproduced below:

*"**8.** The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can*

be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner 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. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

5.3 The above view was reiterated by the Hon'ble Supreme Court in Amchong Tea Estate [<u>2010 (257) E.L.T. 3</u> (S.C.)]. Further, the Hon'ble High Court of Gujarat in case of Ramesh Vasantbhai Bhojani – [2017 (357) E.L.T. 63 (Guj.)] and Hon'ble Tribunal Bangalore in the case of Shri Abdul Gafoor Vs Commissioner of Customs (Appeals) [2024-TIOL-565-CESTAT-BANG] took a similar view while dealing with Section 128 of the Customs Act, 1962.

5.4 In terms of legal provisions under Section 128 of the Customs Act, 1962 and in light of the judicial pronouncements by the Hon'ble Supreme Court, Hon'ble High Court and Hon'ble Tribunal Bangalore, it is settled proposition of law that the appeals before first appellate authority are required to be filed within 90 days, including the condonable period of 30 days as provided in the statute, and the Commissioner (Appeals) is not empowered to condone any delay beyond 30 days.

5.5 In light of the above observation, I find that the appeal has been filed after 90 days from the date of receipt of the order. I am not empowered to condone the delay in filing the appeal beyond the period specified in Section 128 of the Customs Act, 1962. Hence, the same is held to be time barred.

6. In view of above, I reject appeal on the grounds of limitation without going into the merits of the case.

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

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CUSTOMS (APPEALS), AHMEDABAD

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