सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250771MN000000D905

क	फ़ाइल संख्या FILE NO.	S/49-444/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-148-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	11.07.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 27/DC/ICD/IMP/23-24, dated 22.12.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Hindprakash Chemicals Pvt. Limited (Previously known as Hindprakash Tradelink Pvt ltd.) Plot no. 10/6,Phase I GIDC Vatva Ahmedabad- 382445

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 exported
(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 मे 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 सम्बंन्ध 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

Appeal has been filed by M/s Hindprakash Chemicals Pvt. Limited (Previously known as Hindprakash Tradelink Pvt. ltd.) Plot No. 10/6, Phase I, GIDC - Vatva, Ahmedabad- 382445, (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 27/DC/ICD/IMP/23-24, dated 22.12.2023 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, ICD - Khodiyar, Customs Ahmedabad (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed refund claim of Rs. l,00,259/- on account of excess payment of Anti-Dumping Duty made by them vide their refund application dated 20.09.2015 filed on 15.10.2015. The Appellant had filed Bills of Entry No. 9375013, dated 27.05.2015 for the import of Meta Phenylene Diamine (MPD} falling under CTH 29215120 of CTA 1975 from the supplier Zhejiang Amino Chem Co., China for the import of these goods.

2.1 For the import of the goods mentioned above, Anti-Dumping Duty under sub section (1) and (6) of Section 9A of Tariff Act, read with Rules 18 and 20 of Customs Tariff Rules, 1995 is applicable as per Notification 01/2014. The Appellant had submitted that at the time of import they have wrongly mentioned that the Anti-Dumping duty is payable as per Sr. No. 3 of Notification No. 01/2014, i.e., USD 0.707/kg., instead of Sr. No. 2 of the Notification 01/2014, i.e., USD 0.615/kg. The Appellant had submitted that they have paid the excess paid the ADD of Rs. 1,00,259/- under oversight and accordingly claimed refund of Rs. 1,00,259/- under to provisions of Section 27 (1) (b) of the Customs Act, 1962 with the office of Deputy Commissioner of Customs, ICD - Khodiyar (the refund sanctioning authority). The refund sanctioning authority also perused documents available in refund file and found that in the present case the Appellant had paid the excess paid the ADD of Rs. 1,00,259/-.

2.2 The refund sanctioning authority found that the Bill of Entry filed at ICD - Khodiyar and Custom duty has been paid vide challan No. 2011711225 dated 28.05.2015 and refund claim has been filed on 15.10.2015. Thus, the same is filed within the time limit as prescribed under section 27 of the Customs Act, 1962. The authority has also perused the documents available on refund file and found that in the present case, the importer had filed Bills of Entry 9375013 dated 27-05-2015 for the import of Meta Phenylene Diamine (MPD). For this import items, Anti-Dumping Duty under sub section (1) and (5) of Section 9A of the Tariff Act, read with rule 18 and 20 of the Customs Tariff Act (Identification Assessment and collection of Anti-Dumping Duty on Dumped Articles and for determination of injury) Rules, 1995 was applicable as per Notification 011/2014 dated 11.03.2014.

2.3 The refund sanctioning authority also examined and found that in the instant

case the Appellant had imported Meta Phenylene Diamine (MPD) from China and Supplier of the goods was Zhejiang Amine Co. Ltd. China and the said Bill of Entry No. 9375013 dated 27-05-2015 was cleared under RMS. As per the Notification No.011/2014 dated 11.03.2014, the Appellant had to pay the Anti-Dumping Duty as per Sr.No.2 the duty rate is USD 0.615/kg., but by oversight the Appellant had wrongly mention that the Anti-Dumping Duty was payable as per Sr. No.3 in which applicable Anti-Dumping Duty was USD 0.780/kg. Due to wrongly mention Sr. No. the Appellant had paid Rs.1,00,259/- excess Anti-Dumping Duty. The refund sanctioning authority further found that said mistake contained under Section 154 of the Customs Act, 1962 is as under:

> *"Section 154: Correction of clerical errors, etc. Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be correct by the Central Government, the Board or such officer of customs or the successor in office, as the case may be."*

2.4 In view of the above, the refund sanctioning authority passed an Order-in-Original No. 38/DC/ICD/IMP/REF/2015, dated 07.01.2015 sanctioning the refund claim of Rs. 1,00,259/- to M/s. Hindprakash Tradelink Pvt. Ltd. under Section 27 of the Customs Act, 1962 on the above-mentioned grounds.

2.5 The Order-in-Original No. 38/DC/ICD/IMP/REF/2015, dated 07.01.2015, passed by the Deputy Commissioner of Customs, ICD - Khodiyar, Gandhinagar was examined by the Commissioner of Customs, Ahmedabad under Section 27 of the Customs Act, 1962. The Commissioner called for the records of the proceedings in which the Deputy Commissioner passed the said Order-in-Original. In exercise of power vested under Section 129 D(2) of the Customs Act, 1962, the Order-in-Original No. 38/DC/ICD/IMP/REF/2015 dated 07-01-2015 was not proper in view of the facts of the case hence an appeal was preferred to be filed against that said Order-in-Original before the Hon'ble Commissioner (Appeals), Customs Ahmedabad on 09.05.2016.

2.6 The Commissioner (Appeals) vide O.I.A. No. AHD-CUSTM-000-APP-077-16-17 dated 23.01.2017 had set aside the Order-in-Original No. 38/DC/ICD/IMP/REF/2015 dated 07-01-2015, passed by the Deputy Commissioner by way of remand. Accordingly, protective demand vide Show Cause Notice No. VIII/20-807/ICD/REF/2015, dated 18.06.2016 was issued by Deputy Commissioner ICD - , Khodiyar.

2.7 Personal hearings in the matter were fixed on 27.09.2023 (1st Personal Hearing), 08.10.2023 (2nd Personal Hearing), & 10.10.2023 (3rd Personal Hearing). Further, the Appellant vide letter dated 08.10.2023 requested to give longer period for their submission. Further, one more personal hearing was fixed on 15.12.2023 however the Appellant neither submitted any documents nor appeared for the personal hearing.

2.8 The adjudicating authority observed that in the instant case, there were no documents presented by the Appellant which was in existence at the time of the goods cleared but the Appellant himself had not availed the benefit of Notification. Further, the Notification is not a document of Appellant, therefore, this cannot be covered under scope of Section 154 of the Customs Act, 1962. Hence the order did not appeared to be legal and proper.

2.9 The Commissioner (Appeals) vide OIA No. AHD-CUSTM-000-APP-077-18-19 DATED 23.01.2017 remitted the case back with direction to ascertain the facts, examine the documents, submission and case laws relied upon by the appellant after following principle of natural justice and adhering to provisions.

2.10 Consequently, the Adjudicating Authority passed the following order:

i. He ordered to recover the total amount of refund of Rs. 1,00,259/- (Rupees One Lakh Two hundred Fifty Nine only) sanctioned vide OIO No. 38/DC/ICD/IMP/REF/2015 dated 07.01.2016 under section 28 of the Customs Act, 1962;

ii. He ordered to recover the interest at an appropriate rate as applicable, on the erroneously refunded to the tune of Rs. 1,00,259/- to M/s. Hindprakash Tradelink Pvt. Ltd. under Section 28AA of the Customs Act, 1962.

3. Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

(A) **The appellant's refund application was on record along with all the relevant documents, no additional documents were required to be submitted in remand back proceedings.**

3.1 In the impugned order it is mentioned in the Impugned order by the learned adjudicating that the appellant failed to appear before the adjudicating authority and not submitted any documents. In this regard the appellant would file to submit that the last hearing was scheduled on 15.12.2023 in the matter, however the communication was dispatched by the department was only on 20.12.2033 and was received by the appellant only on 21.12.2023 as could be seen from the Speed Post tracker. In this regard the appellant informed to the department vide their mail dated 20.12.2033. This is the reason for nonappearance for the personal hearing.

3.2 As regard to non submission of documents during the remand proceedings, it is submitted that in their case refund arised due to inadvertent mistake in selecting rate of duty in the Bill of entry which is very much available with the department and also made available, by the appellant with their refund application along with other documents which

were the same documents available at the time of clearance of imported goods. Therefore for there were no need to submit any additional documents.

(B) **Excess payment of ADD by the appellant is not disputed**.

3.3 It is admitted facts by the department that the appellant have inadvertently and oversight made excess payment of ADD under Sr.No.3 instead of under Sr.No.2 of Notification No.11/2014-Cus-ADD.

(C) **It is not disputed by the department that Refund claim submitted by the appellant is within the time limit.**

3.4 It is not disputed by the department that the Appellant have filed their refund claim for the inadvertently excess paid duty with in time limit stipulated in terms of Section 27 of the Customs Act, 1962.

(D) **It is settled law that excess duty paid due to inadvertent mistake, refund can be granted in terms of Section 27 by rectification in terms of Section 154 of the Customs Act, 1962.**

3.5 The Appellant has submitted that the learned adjudicating authority has rejected refund claim sanctioned vide OIO No. 38/DC/ICD/MP/REF/2016 dated 07.01.2016 and order recovery of the same on the following grounds.

1. The Bill of Entry was cleared under RMS and not -re-assessed and hence the Section 154 of Customs Act,1962 is not applicable and also the assessment order of Bill of Entry has not been challenged by the importer within the period under Section 128 of Customs Act,1962;
2. The order of Commissioner (Appeals) vide OJA No.APP-164-15-16 dated 05.11.2015 passed in the matter of M/s Khandala Enterprise has been challenged by the department before CESTAT, Ahmedabad and the departmental appeal dismissed on the ground of Government's litigation Policy without going in to the merits of the appeal. Ahmedabad;
3. Hon'ble Madras High Court in case of M/s Neoteric Informatique Ltd [2015(315) ELT494(Mad) which is squarely applicable in this case has categorically observed that Bill of entry is document of importer and for its correction, they cannot invoke section 154 of Customs Act,1962;
4. Similarly in case of Samsung India [2015(315) ELT 474 (Tri-Del), Hon'ble Tribunal Delhi has stated that re-assessment/redetermination is not subject matter of Section 154. Amendment sought taking shelter of Section 154 neither being clerical or arithmetical mistake.

3.6 The Appellant has submitted that they have filed their Application for refund of Rs.1,00,259/- for the ADD being excess paid due to inadvertent mistake in mentioning

correct rate as per Sr.No.3 instead of Sr.No2 of Notification No.11/2014- Cus-ADD. In the first round of adjudication the adjudicating authority themselves formed an opinion that the mistake occurred in the Bill of Entry filed by the importer i.e. Appellant can be considered as mistake in term of Section 154 of the Customs Act, 1962 and also relying on the OIA No. APP-164-15-16 dated 05.11.2015 passed in the matter of M/s Khandala Enterprise have sanctioned refund.

3.7 In the remand back proceedings, the learned adjudicating authority in their impugned order referring, APP-164-15-16 dated 05.11.2015 passed in the matter of M/s Khandala Enterprise, the Madras High Court in case of M/s Neoteric Informatique Ltd [2015(315) ELT 94(Mad) and Samsung India [2015(315) ELT 47(Tri-Del), it is observed that:

1. APP-164-15-16 dated 05.11.2015 passed in the matter of M/s Khandala Enterprise, appeal against the said order was dismissed by the Hon'ble CESTAT on the Government's Policy on litigation and therefore reliance on the said decision is not correct.
2. The appellant had not filed an appeal against the Bill of Entry
3. That the present case the BE cleared under RMS, Section 154 of the Customs Act, 1962 have no role to play.

3.8 Based on the aforesaid observation, the learned adjudicating authority vide impugned order, have rejected the refund claim originally sanctioned vide OIO No. 38/DC/ICD/IMP/REF/2016 dated 07.01.2016 and ordered for recovery of the refund claim of Rs. 100,259/-.

3.9 In this regard the Appellant would like to contend, that the excess payment of duty is not disputed by either original adjudicating authority, Commissioner (Appeals), and again by the learned adjudicating authority in the second round of litigation. It is the case of the Appellant that excess duty paid inadvertently be refunded to them in terms of Section 27 of the Customs Act, 1962. In such cases the refund can only be processed after rectification of Bill of Entries in terms of Section 154 as held by various judiciaries and appellate forum across India. There is plethora of orders, however, the appellant would like to rely on the following case laws.

3.10 In the identical case of Commissioner of Customs, New Delhi Versus Intex Technologies (India) Ltd. (2023) 9 Centax 262 (Tri-Del) wherein facts of the matter and what has been held by the Hon'ble Tribunal as under.

> *Refund - Excess additional duty of Customs - Appeal to Tribunal - Period 30-3-2015 to 14-7-2015 - As part of its business activities, assessee imported mobile handsets, including cellular phones, during period between 30-3-2015 to 14-7-2015 and filed Bills of Entry for home consumption and paid additional duty of customs by way of scrips in terms of section 3(1) of Customs Tariff Act, 1975 at rate of 13.5 per cent of value of said goods - In view of express provisions of Notification dated 17-3-2012, excise duty on*

mobile handsets including cellular phones was payable at rate of 1 per cent of value of such goods -Assessee was, therefore, required to pay additional duty of customs at rate of only 1 per cent of value of imported goods instead of at rate of 13.5 per cent paid by it - Assessee, therefore, claimed refund of excess additional duty of customs paid - Contending that since manufacturer of imported goods was outside India, CENVAT credit could not have been taken and so it should be treated that condition of non-availment of CENVAT credit attached to Notification stood satisfied - High Court examined correctness of refund rejection order dated 22-9-2016 passed by Assistant Commissioner in Writ Petition filed by assessee and said order, by necessary implication, stood set aside by High Court - HELD : Department could not have filed appeal before Commissioner (Appeals) to assail order of Assistant Commissioner which was already set aside by High Court - Furthermore, directions issued by High Court were also duly complied with by Assistant Commissioner in fresh order dated 29-11-2016 and refund payment was made to assessee - Special Leave Petition filed by Department before Supreme Court challenging order passed by Delhi High Court was dismissed on 7-7-2017 - Thus, when appeal was filed by department before Commissioner (Appeals) against order of Assistant Commissioner, correctness of said order was stood decided against department by High Court - Hence, order dated 26-6-2019 passed by Commissioner (Appeals) was without jurisdiction - Department not only unnecessarily filed appeal before Commissioner (Appeals), but instant was appeal also unnecessarily filed by department before Tribunal - Section 27 read with Section 3 of Customs Act, 1962. [paras 24 and 25]

3.11 In the said case law attention is drawn to para No. 15, 16, 1 7 the text of the same are reproduced as under:

15. On 30-12-2016, Intex filed an application under section 154 of the Customs Act for rectification of the mistake in the order dated 29-11-2016 of the Assistant Commissioner. The Assistant Commissioner allowed the application for rectification and sanctioned the payment of balance amount of interest of Rs. 3,72,55,652/- in terms of section 27A of the Customs Act.

16. The amount together with interest was received by Intext through RTGS Facility.

17. In February 2017, the department filed a Special Leave Petition (C) No. 18123/2017 before the Supreme Court against the order dated 8-11-2016 passed by the Delhi High Court and in this Special Leave Petition, the department raised grounds regarding the maintainability of the refund application under section 27 of the Customs Act. The Supreme Court dismissed the Special Leave Petition filed by the department by order dated 7-7-2017. As a result of the dismissal of the Special Leave Petition, the order dated 8-11-2016 of the High Court directing the department to grant refund of the excess customs duties paid by Intex with interest attained finality and the department was bound by the order.

3.12 Thus in the case of excess refund use of Section 154 is- not prohibited instead it was endorsed in the aforesaid case by the Hon'ble High court and its appeal by the department in the Hon'ble Supreme Court was rejected / dismissed.

3.13 In the case of the Appellant due to typographical inadvertent error rate of duty was wrongly mentioned in the BE resulting in to excess payment. Here it is not the question of dispute with regard to rate or classification of duty. Therefore in the case of appellant it was purely a case of mistake leading to excess payment of refund. In this regard the appellant would like to rely in the following case law.

3.14 In the case of Minex Metallurgical Co Pvt Ltd vs Commr. of C.Ex. Nagpur reported at 2015 (318) E.L.T. 273 (Tri - Mumbai) the Hon'ble Tribunal has held that:

Refund - Excess payment - Mistake of declaring wrong currency resulting in payment of excess duty - Appellant rightly entitled to refund of excess duty paid - Section 27 of Customs Act, 1962. [para 5.2]

Appeal allowed

CASES CITED

Commissioner v. Biomerieux India Pvt. Ltd. — 2014 (299) E.L.T. 487 (Tribunal) — Relied on [Para 3]

Commissioner v. Prima Telecom Ltd. — 2011 (266) E.L.T 386 (Tribunal) — Relied on..... [Para 3]

Priya Blue Industries Ltd. v. Commissioner — 2004 (172) E.L.T. 145 (S.C.) — Distinguished [Paras 1, 2, 3, 5.2]

Secure Meters Ltd. v. Commissioner — 2013-TIOL-984-CESTAT-DEL — Relied on..... [Para 3]

REPRESENTED BY : Shri P.V. Sadavarte, Advocate, for the Appellant.

Shri S.J. Saho, Asst. Commissioner (AR), for the Respondent.

[Order]. - The appeal is directed against Order-in-Appeal No. PVR/281/ NGP/APPL/2012, dated 31-12-2012 passed by Commissioner of Central Excise & Customs (Appeals), Nagpur. Vide the impugned order, the learned lower appellate authority has set aside the order of the assessing officer dated 24-1-2012 granting refund of excess duty paid by the importer, M/s. Minex Metallurgical Co. Pvt. Ltd., the appellant herein, on the ground that without challenging the assessment, refund could not have been sanctioned in view of the Apex Court's decision in the case of Priya Blue Industries Ltd. - 2004 (172) E.L.T. 145 (S.C.). Aggrieved of the same, the appellant is before us.

2. The learned counsel for the appellant submits that the appellant imported "Ferro Titanium Cored Wire" vide bill of entry No. 2650, dated 7-9-2011. In the bill of entry, the transaction value was declared as Euro 12786.50 instead of US $ 12786.50. The appellant realized the mistake immediately after payment of duty and clearance of the goods and therefore, they filed a refund claim towards the excess payment of duty made. He also produced the copy of the purchase order No. 51/00381031/00 dated 4-7-2011 wherein the currency was correctly indicated as US $ and also the Sales Confirmation Order dated 30-6-2011 which also shows the currency as US $. He also obtained a letter from the foreign supplier indicating that the transaction was in US $ whereas the invoice issued, the same was wrongly mentioned as Euro. He also produced a letter from the banker M/s. Standard Chartered Bank, Mumbai wherein the bank has confirmed that the amount, paid to the foreign supplier was US $ 12786 In the light of these evidences, the adjudicating authority was convinced that there was a genuine error committed by the importer, the refund claim was examined from the unjust enrichment angle also and it was found that the appellant had not passed on duty incidence to anybody else. Accordingly, he sanctioned refund claim of the excess duty paid amounting to Rs. 5,59,861/- to the appellant importer. Revenue was aggrieved of this order and they filed an appeal before the lower appellate authority. The lower appellate authority held that if the goods have been cleared on assessment on payment of duty, without challenging the assessment, the appellant could not have been granted any refund as held by the Hon'ble Apex Court in the case of Priya Blue Industries Ltd. v. CC (Preventive) - 2004 (172) E.L.T. 145 (S.C.) wherein it was held that refund claim contrary to assessment order is not maintainable without order of assessment having been modified in appeal or reviewed under Section 28 of Customs Act, 1962, and the original order would stand and therefore, grant of refund is incorrect in law. Hence, the appeal.

3. The learned counsel for the appellant submits that the Priya Blue Industries Ltd. case deals with a situation where the assessment is completed by the competent officer and unless the assessment is reviewed under Section 28, the question of grant of refund claim would not arise. In the present case, the issue involved relates to a mistake by wrongly declaring the foreign currency. This mistake has been rectified in the order of the adjudicating authority and consequently, refund of excess duty paid has been sanctioned. The order of the adjudicating authority itself is a review of the earlier assessment and it is consequent upon such review, refund has been granted and therefore, the ratio of Priya Blue Industries Ltd. case would not apply. He also relies on the decision of this Tribunal in the case of Secure Meters Ltd. v. CC, New Delhi - 2013-TIOL-984-CESTAT-DEL which also involved an identical matter wherein wrong currency was mentioned in the bill of entry and the refund claim was rejected on the same ground as mentioned above. This Tribunal held that the application of wrong exchange rate is a clerical error and on account of such clerical error, a higher amount of duty has been paid, reassessment is not required before filing of the refund claim as the clerical error can be corrected under Section 154 of the Customs Act and accordingly, refund was allowed. The same view was taken by this Tribunal earlier in the cases of CC, New Delhi v. Prima Telecom Ltd. - 2011 (266) E.L.T. 386 (Tri. - Del.), CC (Import & General), New Delhi v. Biomerieux India Pvt. Ltd. - 2014 (299) E.L.T. 487 (Tri. - Del.) and a few other decisions.

Accordingly, he pleads for setting aside the impugned order and restoring the order of the adjudicating authority sanctioning the refund.

4. The learned Additional Commissioner (AR) appearing for the Revenue reiterates the findings of the lower authorities. It is his contention that the mistake should have been corrected within 15 days of the assessment order which has not been done in the present case and therefore, the order of the lower appellate authority is sustainable in law.

5. I have carefully considered the submissions made by both the sides.

5.1 It is an admitted fact that the appellant committed an error while declaring the currency as Euro instead of US $ in the bill of entry. The appellant also submitted evidences by way of copy of purchase orders, letter from foreign supplier, letter from the banker evidencing that the correct currency is US $ and not Euro and therefore, the declaration made in the bill of entry was a mistake. The adjudicating authority on the strength of the documents placed by the appellant, reassessed the duty liability and after satisfying that there is no unjust enrichment involved, sanctioned the excess duty paid as refund. The refund was sanctioned after determining the correct duty liability, which would imply that the adjudicating authority has reassessed the correct liability and consequential refund of the excess duty paid has been sanctioned.

5.2 As regards the finding of the lower appellate authority that since the assessment has not been challenged, the refund could not have been sanctioned, relying on the Priya Blue decision, I observe that the ratio of said decision is not applicable to the facts of the case herein. The Priya Blue case did not deal with any clerical mistake or error committed while filing the import documents. In the present case, there is no dispute about the classification or rate of duty applicable. It is a pure and simple mistake of declaring a wrong currency which resulted in payment of excess duty which has been rectified by the adjudicating authority. Therefore, the question of applying the ratio of Priya Blue case does not arise at all. On the contrary, in a large number of decisions cited by the counsel for the appellant, this Tribunal has held that in case excess duty has been paid on account of clerical error, refund is admissible. Following the ratio of these decisions, I hold that the appellant is rightly entitled to the refund of excess duty paid. Accordingly I set aside the impugned order and allow the appeal and restore the order of the adjudicating authority dated 24-1-2012 granting refund of excess duty paid by the appellant. The learned counsel mentions that in pursuance of the lower appellate authority's order, the refund sanctioned to the appellant has been paid back. Inasmuch as the appellant is rightly entitled to this refund, the same shall be granted to him immediately on receipt of this order.

3.15 In the case of Standard Gava Steel Pvt. Ltd. vs. Commr. Of Cus. (Import), Ambar reported at 2015 (318) ELT 4383 (Tri-Mumbai) wherein the facts of the matter and what has been held by the Hon'ble Tribunal has held as under.

Refund - Rectification of mistake in refund - Appellant before Commissioner (Appeals) only prayed that refund was filed for the total quantity of goods

imported and sold whereas in the application only part of SAD was mentioned and part amount of '14,06,203.88 which was paid in cash through separate TR-6 cha/lan could not be mentioned through oversight - Commissioner (Appeals) rejected appeal only on the ground that amount of ' 14,06,203.88 was not paid in cash, but deposited through DEPB scrip - Issue of DEPB was neither existed nor even in dispute right from payment of duty, claiming of refund of SAD, in adjudication order and in appeal - Commissioner (Appeals) gravely erred in deciding the appeal altogether on a different issue of DEPB, which was never in existence -Mistake occurred on part of appellant that instead of both the amounts they mistakenly mentioned only amount of ' 5,39,837.20 - Appellant in principle entitled for refund of left over amount of '14,06,203.88 but same can be decided only after rectification of mistake in the refund order under Section 154 of Customs Act, 1962 - Matter remanded to adjudicating authority with liberty to appellant to make an application under Section 154 ibid. {paras 5, 5.17}

3.16 In another case of Liebherr India Pvt. Ltd vs Commissioner of Customs {Port), Koltata reported at 2017{358) ELT656 (Tri-Koltaka), wherein the facts of the matter and what has been held as under:

Refund claim - Limitation - Filing of refund claim without challenging assessment order - Refund claim pertaining to excess duty paid on account of erroneous calculation of CVD - HELD : No appealable assessment order issued and request for reassessment/rectification of calculation mistake, as per Section 154 of Customs Act, 1962, not addressed at all - Non-filing or late filing of appeal against original assessment on bill of entry not relevant - Assessee may challenge assessment by way of refund application - In view of settled proposition of law, assessee's letter to AC Refunds to be treated as refund claim, pending with AC, Refunds - OIA set aside and case remanded to AC, Customs Air Cargo Refund Section - Assessee to demonstrate before AC refunds that higher CVD paid in first assessment only due to clerical mistake based on documentary evidence - Department also at liberty to examine aspect of unjust enrichment - Sections 27 and 154 of Customs Act, 1962. [paras 4, 4.1, 4.2, 4.3, 4.4, 5, 6, 7]

3.17 In the case of Commissioner of Cus (Port), Kolkata vs Control Engineering Co. reported at 2018 (363) E.L.T. 435 (Tri. - Kolkata) wherein facts of the matter and what has been held by the Hon'ble Tribunal as under:

Assessment of duty - Self-assessment of duty on imported goods - Rectification of calculation error - Whether importer empowered to correct such error or it is only Department competent to correct the same - Duty calculations, admittedly, having been made by importer by taking total quantity of goods as 5000 instead of 500 coupled with other miscalculations resulting in excess payment of duty, such mistakes rectifiable by the importer himself without requiring any provision of law for doing the same - Sections 17 and 154 of Customs Act, 1962. [paras 5, 6]

3.18 In another case of Commr. Of Customs (Port-Import) vs Volvo India

Pvt.Ltd reported at 2019 (365) E.L.T. 802 (Mad.) wherein the facts of the matter and what has been held by the Hon'ble Court isas under.

> *Rectification of clerical and arithmetical error under Section 154 of Customs Act, 1962. Consequently refund thereof - Typographical error on part of supplier of adding a zero to incorrectly typical amount. Supplier of adding a zero to incorrectly typical amount, the difference involved - Excess amount of duty collected, on account of wrong freight amount, being included in CT value - Correction of clerical errors can be made "at any time" and therefore, there is no need for preferring any separate appeal to the effect of the difference of excess to a duty of the difference of any separate appeal to the effect of such rectification subject to test of unjust enrichment under Section 27 of Customs Act, 1962 [para's 11, 12]*

(E) **Excess duty paid is without authority of law and has to be refunded**

3.19 The Appellant has submitted that the actual duty payable on the goods imported by them was as per Sr.No.2 and not as per Sr.No.3 of Notification No.11/2014-Cus-ADD. However, inadvertently the Appellant have mentioned Sr.No.3 instead of Sr.No.2 which has resulted in to excess payment of ADD to the extent of Rs.1,00,259/-. Accordingly refund was claimed by the Appellant in terms of Section 27 of the Customs Act, 1962. The department cannot retain excess duty other than legally or legitimately payable. In this regard the appellant would like to rely on the following case laws.

3.20 In the case of Micromax Informatics Ltd vs Union of India reported at 2019 (369) E.L.T. 543 (Bom.) wherein facts of the matter and what has been held by the Hon'ble court is as under:

> *Refund claim - Excess payment - Assessee's claim that he vide of Supreme Court underment duty collected was in excess of Legally payable - HELD - Departmental underment duty collected was in excess of Legally payable - HELD - Departmental Matter remanded for determination at issue of unjust enrichment - Section 27 of Customs Act, 1962 [para's 31, 32, 33]*

> *Refund - Excess due paid - It can be claimed without challenging assessment or reassessment of Bill of Entries - This is in consonance with April, 2017 amendments to Section 17 and 17 of Customs Act, 1962 [para's 20, 32, 33]*

PERSONAL HEARING:

4. Personal hearing in the matter was held on 18.06.2025, following the principles of natural justice. Shri Vijay N. Thakkar appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the adjudicating authority and the defense put forth by the Appellant in their appeal memorandum. Ongoing through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

i. Whether the impugned order correctly applied Section 154 of the Customs Act, 1962, for rectification of an inadvertent error in selecting the Anti-Dumping Duty rate in the Bill of Entry;

ii. Whether the excess payment of Anti-Dumping Duty, admittedly made due to an inadvertent error, is refundable under Section 27 of the Customs Act, 1962, and whether challenging the original assessment order is a mandatory pre-requisite for such a refund;

iii. Whether the principles of natural justice were adequately followed in the second round of adjudication, particularly concerning the Appellant's non-appearance at the personal hearing.

5.1 The Appellant has provided a plausible reason for their non-appearance at the personal hearing scheduled on 15.12.2023, namely, the communication for the hearing was dispatched on 20.12.2023 and received on 21.12.2023, after the scheduled date. They promptly informed the department via email. While the adjudicating authority noted the non-appearance, the Appellant's explanation suggests that they were not given a fair opportunity to attend due to a departmental communication delay. This procedural lapse, while not necessarily vitiating the entire order on its own given the extensive documentation already on record, should be viewed favorably towards the Appellant's overall plea for a fair consideration of their case.

5.2 The central point of contention is whether the impugned order correctly applied Section 154 of the Customs Act, 1962, for rectification of an inadvertent error in selecting the Anti-Dumping Duty rate in the Bill of Entry, and whether the excess payment of ADD is refundable under Section 27 without challenging the original assessment order. The adjudicating authority rejected the refund on the premise that Section 154 is inapplicable and that the assessment order was not challenged. However, a deeper analysis of the nature of the error and relevant judicial pronouncements reveals a different picture.

5.3 Nature of the Error: Clerical vs. Re-assessment: The Appellant's mistake was in selecting the wrong serial number of an already applicable Notification, leading to a higher ADD payment. This is not a dispute about the fundamental classification of goods or the applicability of the ADD notification itself. It is an error in applying the correct rate from the correct notification. Such an error, where the correct rate was available but inadvertently misapplied, falls squarely within the ambit of an "accidental slip or omission"

or a "clerical error" as contemplated by Section 154 of the Customs Act, 1962. It is not a case requiring a re-assessment of the Bill of Entry based on a change in classification or valuation, but rather a rectification of an error in calculation or application of the correct rate.

5.4 In this regard, I rely upon the following cases:

- Minex Metallurgical Co. Pvt.Ltd (supra): This case is highly relevant. The Tribunal explicitly held that a mistake in declaring the wrong currency, leading to excess duty payment, was a "clerical error" and refund was admissible, distinguishing it from cases requiring challenge to assessment. This directly supports the Appellant's argument that an inadvertent error in applying a rate/value can be rectified.

- Control Engineering Co. (supra): This judgment reinforces that miscalculations by the importer resulting in excess payment are rectifiable by the importer himself. The error in the present case is analogous to a miscalculation.

- Volvo India Pvt.Ltd (supra): The Madras High Court's ruling that "correction of clerical errors can be made 'at any time' and therefore, there is no need for preferring any separate appeal" under Section 154 directly undermines the adjudicating authority's argument that the assessment order needed to be challenged under Section 128.

5.5 The adjudicating authority's insistence that the assessment order must be challenged under Section 128 is not universally applicable, especially after the amendments to the Customs Act in 2011 and the same is supported by judicial precedents as under:

- Intex Technologies (India) Ltd. (supra): This decision by CESTAT (Delhi) clearly states that "Refund - Excess duty paid - It can be claimed without challenging assessment or reassessment of Bill of Entries - This is in consonance with April 2011 amendments to Sections 17 and 27 of Customs Act, 1962." This is a direct rebuttal to the adjudicating authority's stance.

- Liebherr India Pvt.Ltd (supra): This case similarly held that "Non-filing or late filing of appeal against original assessment on bill of entry not relevant - Assessee may challenge assessment by way of refund application." This further strengthens the Appellant's position that a separate appeal against the assessment order is not a pre-requisite for claiming a refund of excess duty paid due to clerical errors.

- Micromax Informatics Ltd (supra): The Bombay High Court emphatically stated that "Excess duty paid - It can be claimed without challenging assessment or reassessment of Bill of Entries - This is in consonance with April 2011 amendments to Sections 17 and 27 of Customs Act, 1962." This judgment is a powerful precedent in favor of the Appellant.

5.6 The Adjudicating Authority has also referred to certain judicial pronouncements, however, I find that they are not applicable in the instant case as under:

- M/s. Neoteric Informatique Ltd. [2015 (315) ELT 494 (Mad.)] and Samsung India [2015 (315) ELT 474 (Tri-Del)]: These cases, relied upon by the adjudicating authority, generally deal with situations where there is a fundamental dispute regarding classification or valuation, requiring a re-assessment or re-determination, which is distinct from a mere clerical or arithmetical mistake in applying a correct rate/notification. The Appellant in the present case is not seeking a re-assessment of classification or valuation but a rectification of an inadvertent error in applying the correct rate from an undisputed notification. The ratio of these cases, therefore, is not squarely applicable to the facts of the present case, where the error is of a clerical nature.

- M/s. Khandala Enterprise (OIA No. APP-164-15-16 dated 05.11.2015): The adjudicating authority's observation that the departmental appeal against this order was dismissed on litigation policy, not merits, is noted. However, the Appellant is relying on the principle that excess duty due to inadvertent error is refundable, which was upheld in the first OIO in their own case, and supported by a plethora of other judgments cited above, which were decided on merits. The fact that an appeal in another case was dismissed on litigation policy does not negate the principles established in other binding precedents.

5.7 It is a crucial and undisputed fact that the Appellant paid excess ADD. The department cannot retain duty that is not legally payable. This fundamental principle of "no taxation without authority of law" (Article 265 of the Constitution of India) supports the Appellant's claim. The original OIO sanctioned the refund after being satisfied that the incidence of duty had not been passed on, supported by a CA Certificate. The impugned order does not provide any new findings or evidence to contradict this. Therefore, considering the nature of the error as a rectifiable clerical mistake under Section 154, the clear judicial pronouncements allowing refunds of excess duty due to such errors without necessarily challenging the original assessment, and the undisputed fact of excess payment, the impugned order's rejection of the refund claim is not legally sustainable.

6. In view of the detailed discussions and findings above, this appellate authority concludes that the appeal filed by the Appellant is sustainable on merits and the impugned order suffers from legal infirmities.

7. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

i. The appeal filed by M/s Hindprakash Chemicals Pvt Limited is hereby ALLOWED;

ii. The impugned Order-in-Original No. 27/DC/ICD/IMP/2023-24 dated 22.12.2023 is hereby SET ASIDE;

iii. The refund claim of ₹1,00,259/- on account of excess payment of Anti-Dumping Duty, originally sanctioned vide Order-in-Original No. 38/DC/ICD/IMP/REF/2016 dated 07.01.2016, is hereby RESTORED.

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

F. No. S/49-444/CUS/AHD/23-24 2527

Date: 11.07.2025

By Registered post A.D/E-Mail

To,
M/s Hindprakash Chemicals Pvt. Limited,
Plot no. 10/6, Phase I,
GIDC Vatva,
Ahmedabad - 382445

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

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