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 - 20260271MN0000555EB9

क	फ़ाइल संख्या FILE NO.	S/49-344/CUS/MUN/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)	MUN-CUSTM-000-APP-880-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/526/AC/KRP/GR4/2024-25 dated 17.10.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Mukesh Steel, C-45, Ground Floor, Wazirpur, Industrial Area, Delhi 110 052

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 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 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

The present appeal has been filed by M/s.Mukesh Steel, C-45, Ground Floor, Wazirpur, Industrial Area, Delhi 110 052, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/526/AC/KRP/GR4/2024-25 dated 17.10.2024 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Custom House, Mundra.

2. Facts of the case, in brief, are that the appellant had filed bill of entry No 3665170 dated 15/06/2019 (hereinafter referred to as "said bill of entries") through its Custom Broker M/s. Shivam Clearing Agency for import of goods declared as "Stainless Steel Cold Rolled Circle AIFTA "REF NO-KL-2019-AI-21-054341 dated 01/06/2019" (hereinafter referred to as 'said goods) falling under CTH 72209090 of the Customs Tariff Act, 1975 availing the benefit of Sr. No. 967(I) of Notification No. 046/2011 dated 01.06.2011 on the basis of Certificate of Origin purportedly issued by the Ministry of International Trade and Industry, Malaysia. Details of the said bill of entry are as under:

Sr. No.	Bill of Entry and Date	Description of Goods	Assessable Value (INR)	COO reference no.	Name of Supplier
1.	3665170 15/06/2019	Stainless Steel Cold Rolled Circle	47,18,527/-	KL-2019-AI-21-054341 dated 01/06/2019	M/s JENTAYU INDUSTRY

2.1 Letter F. No. DIC/FTA/70/2023-FTA Cell IV-O/o Pr COMMR-DIC-DELHI dated 11.10.2023 issued by Deputy Commissioner & OSD (Cell-4), FTA Cell, Directorate of International Customs, CBIC, indicated that the importer imported "Stainless Steel Cold Rolled Circle" classifying the same under CTH 7220 9090 through Malaysia and violating the Rules meant for Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and India Rules, 2009 in order to avail exemption from payment of Basic Custom Duty. In view of the above mis-declaration by the importer, undue benefit on the basis of the preferential certificate of origin was

availed which resulted into misuse of the FTA resulting in evasion of customs duty.

2.2 In view of above, it appears that the COO No. KL-2019-AI-21-054341 dated 01/06/2019 issued in the name of supplier M/s. JENTAYU INDUSTRY was fake and was never issued by MITI, Malaysia. Thus, the COO certificate submitted by the importer to avail the benefit of Sr. No. 967(I) of Notification No. 046/2011 - Customs dated 01.06.2011, is not authentic. The details of the consignment and the amount of differential duty as a result of producing the fake certificates of origin are as under:

Sr. No.	B/E No. & Date	A.V.	BCD @ 7.5%	SWS @10% of BCD	IGST @18%	Total duty	Duty Paid	Diff. Duty
1	3665170	47,18,527	353890	35389	919405	1308684	849335	459349

In view of the above, it appeared that the Appellant had evaded the customs duty to the tune of Rs. 4,59,349/- by submission of fake & forged COO certificate.

2.3 Accordingly, a Show Cause Notice was issued to the Appellant, asking them, for proposals of:

i. Rejection of certificate of country of origin used for availment of concessional rate of customs duty
ii. Demand of differential Customs duty of Rs. 4,59,349/-under Section 28(4) of the Customs Act, 1962 along with applicable interest thereon under Section 28AA of the Customs Act, 1962.
iii. Imposition of penalty under Section 114A of the Customs Act, 1962 on the Appellant.
iv. Imposition of penalty under Section 114AA of the Customs Act, 1962 on the Appellant.

2.4 Consequently, the adjudicating authority passed the following order with regard to Appellant:

i. He ordered to reject benefit of Certificate of Origin KL-2019-Al-21-054341 dated 01/06/2019 used for availment of concessional rate of customs duty in Bill of Entry No. 3665170 dated 15/06/2019 and ordered to re-assess the said goods on merit rate of duty.

ii. He confirmed and ordered to recover differential duty of Rs. 4,59,349/- under section 28(4) of Customs Act, 1962.

iii. He confirmed and ordered to recover applicable interest on the differential duty above under Section 28AA of Customs Act, 1962.

iv. He imposed a penalty of Rs. 4,59,349/- on the Appellant under Section 114A of Customs Act, 1962.

v. He imposed a penalty of Rs. 2,00,000/- (Rs. Two lakhs only) on the Appellant under Section 114AA of Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Assistant Commissioner, Custom House, Mundra.

3.1 The appellant contends that the Adjudicating Authority has wrongly held that nobody appeared for personal hearing for the dates fixed. It is submitted that the counsel for the appellant did contacted the appraising section and also sent an email dated 13.09.2024 at 11.252 AM intimating the Adjudicating Authority that proceedings has to be dropped as the demand pertaining to the said Bill of Entry is already confirmed on the very same issue by the Principal Commissioner vide Order dated 06.05.2024 and a copy of the order was also mailed for the record. The appellant cannot be penalized twice for the same offence and therefore the present proceedings is liable to be quashed.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 28.01.2026 following the principles of natural justice wherein Shri Prem Ranjan Kumar, Advocate, appeared for the hearing and re-iterated the submissions 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 Assistant Commissioner, Custom House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 Before going into the merits of the case, I find that the appeal has not been filed within the stipulated period of 60 days as per Section 128 of the Customs Act, 1962. The said section provides for a period of sixty days for filing an appeal, with a further grace period of thirty days if sufficient cause is shown for the delay. In this case, the appeal was filed with a an actual delay of 9 days and not 5 days as submitted in the application which is beyond the initial 60 day period, but within the extended thirty-day period. The Appellant has attributed the reason that the order was misplaced in the office of the Appellant after thorough search, the Appellant took steps for filing the appeal resulting delay. While parties are expected to exercise due diligence, minor delays attributable to administrative oversights, especially when the appellant acts promptly upon discovering the issue, are generally condoned by appellate authorities to ensure that justice is not denied on mere technicalities. Considering the explanation provided, which indicates no deliberate inaction or gross negligence, I find that the Appellant has shown "sufficient cause" for the delay. Therefore, the miscellaneous application for condonation of delay is allowed in the interest of natural justice.

5.2 Now coming to the merits of the case, I find that the primary question is whether an Assistant Commissioner can "re-adjudicate" a matter already decided by a Principal Commissioner. The primary legal question is the status of an adjudication order passed when a prior order on the same facts already exists. Under the Customs Act, 1962, the adjudication process is a quasi-judicial function. Once an Adjudicating Authority passes an order, it becomes functus officio regarding that specific dispute. In the present case, it is observed that the Principal Commissioner had already passed a comprehensive order vide OIO No. MUN-CUSTM-000-COM-08-24-25 dtd. 06.05.2024 wherein the import vide Bill of Entry No. 3665170 dtd. 15/06/2019 of the present appeal has already been covered and adjudicated. The Department's attempt to re-adjudicate the matter through the Assistant Commissioner is a blatant violation of procedural law. If the Department was aggrieved by the Principal Commissioner's order, the appropriate remedy was to file an appeal or a review

under Section 129D of the Customs Act, rather than initiating fresh proceedings.

5.3 The Principle of Res Judicata (a matter already judged) is fundamental to the Indian legal system. It prevents the same parties from litigating the same issue repeatedly. While traditionally a civil law concept (Section 11 of the Code of Civil Procedure), the Hon'ble Supreme Court and various High Courts have consistently held that its underlying principles—aimed at achieving finality in litigation and preventing harassment of parties—apply with equal force to quasi-judicial proceedings, including those under the Customs Act, 1962.

5.4 The core of this principle is encapsulated in the maxim *nemo debet bis vexari pro una et eadem causa*—no man should be vexed twice for the same cause. In the present context, the "cause" is the alleged mis-classification and undervaluation of specific Bills of Entry. Once a competent authority has applied its mind, heard the parties, and delivered a verdict on these specific allegations, the matter is "res judicata." The department is legally barred from re-agitating the same issues before a subordinate or parallel authority.

5.5 Complementing this is the doctrine of Double Jeopardy, enshrined in Article 20(2) of the Constitution of India, which mandates: "No person shall be prosecuted and punished for the same offence more than once." While the term "prosecution" in Article 20(2) is often associated with criminal trials, the judiciary has extended its protective umbrella to quasi-judicial penalties that possess a "punitive" character. In Customs law, the imposition of personal penalties under Section 112 or the confiscation of goods under Section 111 are punitive measures. Allowing the Assistant Commissioner to pass a second order imposing such penalties for the same transaction for which a decision already exists amounts to a constitutional violation.

5.6 The Adjudicating Authority's invocation of Section 111 and 112 the Customs Act, 1962 for confiscation and penalty in the second order is hit by the bar of jurisdiction. The power to adjudicate is exhausted once the first order is signed. Any subsequent order on the same facts is a nullity in the eyes of the law.

5.7 Upon a comprehensive review of the case records, statutory provisions, and established legal doctrines, it is unequivocally concluded that the Impugned Order No. MCH/526/AC/KRP/GR4/2024-25 dated 17.10.2024 is

unsustainable in law. The fundamental tenets of judicial stability and finality of litigation dictate that once a competent authority, such as the Principal Commissioner, has adjudicated upon a specific set of facts and evidence, those facts are rendered res judicata. The subsequent initiation of proceedings by a subordinate authority on identical grounds—without the emergence of new, distinct, or fraudulent evidence—is not merely a procedural irregularity but a substantive jurisdictional failure. Such an action by the Department forces the Appellant into a state of "Double Jeopardy," explicitly prohibited under Article 20(2) of the Constitution of India, as it seeks to penalize and vex the Appellant twice for the same alleged contravention.

6. In view of the above detailed discussion, I pass the following order:

(1) The Order-in-Original No. MCH/526/AC/KRP/GR4/2024-25 dated 17.10.2024 is hereby set aside as being null and void. The appeal filed by M/s. Mukesh Steel is allowed.

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

F. No. S/49-344/CUS/MUN/2024-25 Date:26.02.2026

By Speed post /E-Mail

To,
M/s. Mukesh Steel,
C-45, Ground Floor,
Wazirpur, Industrial Area,
Delhi 110 052

Copy to:
1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House Mundra.
3. The Deputy/Assistant Commissioner of Customs, Custom House, Mundra.
4. Guard File.