



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
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नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009 दूरभाषकमांक Tel. No. 079-
26589281

DIN - 20250571MN0000999EA6

क	फारमसंख्या FILE NO.	S/49-102/CUS/JMN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128कक्षेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-009-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.05.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	01/AC/CHO/2023-24 dated 18.10.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	27.05.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Orient Ceratech Ltd., GIDC Industrial Area, Porbandar – 360577, Gujarat
१.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।	
	This copy is granted free of cost for the private use of the person to whom it is issued.	
२.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसंकरताहोतोइसआ	

	<p>देंशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं।</p>
	<p>Under Section 129 DD(1) of the Customs Act, 1962 (as amended) in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.</p>
	<p>निम्नलिखितसम्बन्धितआदेश/Order relating to :</p>
(क)	बैगेजकेरूपमेंआयातितकोईमाल.
(ख)	<p>(a) any goods imported on baggage.</p> <p>(ख) भारतमेंआयातकरनेहेतुकिसीवाहनमेलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउत्तरेनगएमालयाउत्सगन्तव्य स्थानपरउत्तरेजानेकेलिएअपेक्षितमालउत्तरेनजानेपरयाउत्सगन्तव्यस्थानपरउत्तरेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो।</p>
(ब)	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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	<p>पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :</p> <p>The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :</p>
(क)	कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए।
(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)	सम्बद्धदस्तावेजोकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any.
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	<p>पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क मांगायायाब्याज लगायायादंडकीराशिऔररूपएएकलाखयाउत्सकेमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-</p>
(d)	<p>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/-.</p>
4.	<p>मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिहसआदेशनेआहतमहसुसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं।</p>
	<p>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 :</p>
	<p>सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ</p>
	<p>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</p>

<p>दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा. अहमदाबाद- 380016</p>	<p>2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad- 380 016</p>
<p>5. रीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, रीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-</p>	<p>Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -</p>
<p>(क) अपीलसेसम्बन्धितमामलेमेजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयांडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.</p>	<p>(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;</p>
<p>(ख) अपीलसेसम्बन्धितमामलेमेजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयांडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो, पाँचहजाररुपए</p>	
<p>(ब) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;</p>	
<p>(ग) अपीलसेसम्बन्धितमामलेमेजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयांडकीरकमपचासलाखरूपएसेअधिकहोतो: दसहजाररुपए.</p>	<p>where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees</p>
<p>(द) इसमात्राकेविरुद्धअधिकरणकेसामने, मांगेगाशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेहै, यांडके 10%अदाकरनेपर, जहांकेवलदंडविवादमेहै, अपीलरखाजाएगा।</p>	<p>(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.</p>
<p>6. उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएपालतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगाएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरूपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.</p>	<p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>

ORDER-IN-APPEAL

M/s Orient Ceratech Ltd., GIDC Industrial Area, Forbandar – 360577, Gujarat (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. 01/AC/CHO/2023-24 dated 18.10.2023 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Customs House, Okha (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, facts of the case are that the appellant bearing IEC No. 0588087131 had entered in to a contract with M/s. Middle East Mining Resources, DMCC Unit No. 1606 Floor 16 JBC Tower 4, JUMEIRAH Lakes Towers, DUBAI, UAE and exported bauxite to China. Accordingly, the said exporter had filed 02 manual Shipping Bills as mentioned in the table below, at Custom House, Okha for export of Bauxite in bulk of Indian Origin falling under the CTH 260600.10 Goods were exported through vessel MV “SANDPIPER”. The gross quantity and net quantity after deduction of moisture and FOB value in Indian Rupees and amount of duty paid are as under:

Sr. No.	Shipping Bill No & date	Gross Qty (in MT)	Moisture (in %)	Net Qty in Dry MT	FOB Value in USD	FOB Value in Rs	Amount of Duty paid in Rs (@20%)
01	F-38/10.09.2015	30000	8.35	27495	9,76,072.50	5,42,25,570	1,28,45,114
02	F-39/14.09.2015	26650	8.35	24,424.725	8,67,077.74	5,70,53,715	1,14,10,743
				51,919.725	18,43,150.24	12,12,79,285	2,42,55,857

2.1 Due to non-production of NOC from Geology & Mining Department and for want of Chemical Test Result from Customs Laboratory Kandla, the said Shipping Bills were provisionally assessed. Representative sample was drawn on 11.09.2015 by the proper officer in presence of the authorized representative of the said exporter for S.B. No. 38/10.09.2015 and sent to Custom House Laboratory, Kandla for test results and no sample was drawn for S/B. No. 39/14.09.2015 as the cargo was the same lot/consignment. LEO was given on 11.09.2015 and 16.09.2015 respectively.

2.2 As per the said two Shipping Bills, the total quantity of goods was exported in 56650 MT and 51919.725 in Dry MT, after deduction of moisture @ 8.35% on the basis of pre-shipment analysis report prepared by Ashapura Minechem Ltd., the quantity deducted as moisture from MT is 2505.00 and 2225.275 MT respectively. Thus, the final quantity was

exported on Dry MT basis was 27,495.00 and 24,424.725 MT (Total 51,919.725 Dry MT). The total FOB value of goods covered by above mentioned 02 Shipping Bills, on Dry MT basis, was 18,43,150.24 USD. Export duty involved @ 20% under said S/B was as mentioned in the table above which was paid by the exporter vide Challan No.96 dated 11.09.2015 and Challan No. 99 dated 15.09.2015.

2.3 On receipt of test result from Custom Laboratory, Kandla, it is found that the moisture content was 15.86%, in the sample, whereas the moisture content declared by the exporter, in the invoice and shipping bill, based on the analysis report of their in-house ISO approved laboratory, at the time of export was 8.35%.

2.4 The post-shipment survey at the load port was conducted by the third-party surveyor viz. CCIC Shandong Co. Ltd., Shadong, China. The CCIC issued an analysis report wherein the final moisture content was recorded at 8.62%. On 16.11.2015, the buyer raised a debit note of USD 15,213.82 on the Appellant in accordance with clause 16 of the Contract dated 14.08.2015. The said debit note was raised on the basis of the Certificate of Analysis dated 09.11.2015 conducted at discharge port. On the basis of the above debit note and NOC, the Appellant, vide letter dated 11.05.2016, requested the Customs Authority to finalize the assessment.

However, the then Assistant Commissioner, Custom House, Okha vide his OIO No. 02/AC/ASV/2016-17 dated 21.11.2016 had finalized the subject 02 Shipping Bills considering the moisture content @ 8.35% tested by M/s. Ashapura Minechem Ltd., (in-house ISO Laboratory) based on which the declaration of moisture was made by the exporter in proforma invoice and in Shipping Bills at the time of export, and disallowed the amount of Debit Note issued by the importer towards Penalty on quantity and quality of Bauxite after considering of independent surveyor's report appointed by the buyer at discharge port which was having moisture content @ 8.62%.

2.5 Being aggrieved with the above mentioned OIO, the appellant had filed an appeal before the Commissioner (Appeals), Customs, Ahmedabad. The Commissioner (Appeals), Customs, Ahmedabad vide his OIA No. JMN-CUSTOM-000-APP-020 TO 021-17-18 DT. 03.07.2017 rejected the appeal filed by the appellant and upheld the aforesaid OIO passed by the then Assistant Commissioner, Custom House, Okha.

2.6 Further, on being aggrieved with the above mentioned OIA of Commissioner (Appeals), Customs, Ahmedabad, the said exporter had filed an appeal before the Hon'ble CESTAT Ahmedabad vide Appeal No.11734/2017 and 11735/2017. The Hon'ble CESTAT, Ahmedabad has

decided the subject appeals vide their Final Order No. A/11712-11713/2023 dated 16.08.2023 has set aside the order of finalization of assessment and OIA No. JMN-CUSTOM-000-APP-020 TO 021-17-18 DT 03.07.2017 and allowed the appeal filed by the appellant. The operating portion of Hon'ble CESTAT's order is reproduced as under:-

"2.2 It can be seen that the assessment has been finalized of the Shipping Bill No. F-38 dated 10.09.2015, and Shipping Bill No. F-39 dated 14.09.2015, by deducting upon the moisture contents @8.35% on the basis of pre-shipment test by ISO Lab. The initial issue on the basis of which provisional assessment was done which has been altogether ignored in the order of the adjudicating authority and the same has been confirmed in order-in-appeal bearing No. JMN-CUSTM-000-APP-020 TO 021-17-18 Dated 03.07.2017, again on the basis of moisture contents difference at the port of exportation and price of importation.

2.3. From the foregoing, it is clear that the issue which was the basis of the provisional assessment has been ignored altogether and a fresh issue has been framed by the department and has been conveniently decided ignoring the NOC which was required for re-export.

3. "We, therefore, find that at this stage when against the order of final assessment department is not even in appeal, there is no reason for us to sustain the order of the lower authorities. The order of finalization of assessment is set aside, appeal allowed by setting aside the impugned order. We are not however commenting about the original provisional assessment, as the status is not known to us, nor is appeal made against such assessment, Appeals are allowed."

2.7 The Additional Commissioner (RRA), Customs (Prev.), Jamnagar, vide their letter F. No. GEN/REV/TRIB/631/2023-REV dated 04.09.2023 has informed that the competent authority has accepted the subject CESTAT, Ahmedabad's Final Order No. A/11712-11713/2023 dated 16.08.2023 passed in Customs Appeal No. 11734/2017 and 11735/2017 and Customs Miscellaneous (ORS) application No. 10257 of 2023 and further informed that consequent upon passing of the subject Final Order by the Hon'ble CESTAT, the Shipping Bills covered under the FAO No. 02/AC/ASV/2016-17 dated 17.11.2016 and FAO No.03/AC/ASV/2016-17 dated 18.11.2016 have become provisional and the same are required to be re-assessed / finalized and accordingly the competent authority has directed to re-assess / finalize these shipping bills by taking into account all the material facts and records and after observing fulfillment of all the requisite necessary conditions in the matter.

2.8 The Adjudicating Authority vide the impugned order has ordered for finalization of both the Shipping Bills by allowing the deduction of moisture contents @8.35% on the basis of pre shipment test done by in-house ISO approved laboratory based on which the declaration of moisture is made by the said Exporter and the proforma Invoice was raised as assessed by the Assistant Commissioner, Custom House, Okha vide his OIO No. 02/AC/ASV/2016-17 dated 21.11.2016 and upheld by the Commissioner (Appeals) vide OIA No. JMN-CUSTOM-000-APP-020 TO 021-17-18 DT. 03.07.2017.

3. Being aggrieved with the impugned order, the appellant filed present appeals and contended that;

- The impugned order is a non-speaking one. The Ld. Assistant Commissioner has not considered all the submissions made by the appellants. The Ld. Assistant Commissioner even failed to consider the documents along with the details provided by the appellants. Hence, the impugned order is liable to be set aside on this ground as being passed in violation of principles of natural justice.

- The appellants have correctly discharged duty liability as on transaction value as per section 14 of the Customs Act, 1962.

- The finding of Ld. Assistant Commissioner is based on surmises and conjectures. The Ld. Assistant Commissioner has given such findings without bringing a single particle of evidence on record in support of its finding. The impugned order is full of contradictions. On one hand, the Ld. Assistant Commissioner holds that the original assessment was not provisional and thereafter, proceeds to finalize the very same provisional assessment. With utmost respect, the appellants submit that either the Ld. Assistant Commissioner has not understood the case at all or perhaps has given a finding in the above terms with a pre-determined and biased mind of confirming the demand.

- In terms of Section 14 of the Act, the correct transaction value to be considered for the purpose of calculating the customs duty is the price actually paid or payable for such export. In the present case, there was a provisional assessment in terms of Section 18 of the Act. This fact is not in dispute. In fact, this is the admitted factual position noted in the order of the Hon'ble CESTAT. The provisional assessment was for want of NOC and report from the Customs laboratory with respect to moisture content. Once this is the admitted factual position, the Ld. Assistant Commissioner cannot travel beyond the scope of provisional assessment and determine the moisture content based on private lab report.

- In any event, in terms of clause 16 of the contract dated 14.08.2015, based on the analysis result of CCIC discharge port, the premium and penalty shall be settled by issuing Debit/Credit notes. The said clause provided that the contract price adjustment is based on quality and penalties/ bonuses settled by issuing debit/ credit notes.
- Hence, from the perusal of the contract, it is clear that the buyer shall make the final payment after adjustment of debit notes/ credit notes and the same shall be considered as a contract price. This fact is not in dispute. The said contract has been accepted as true and correct by the Revenue. There is no allegation to the contrary. No case has been made out by the Revenue that the said contract is not genuine. Once this is the admitted factual position, the Revenue cannot ignore the contract in part. It is well settled that the contract has to be read as a whole. The Ld. Assistant Commissioner cannot pick and choose parts thereof to suit their case and suit their convenience. This is precisely what has been done by the department in the present case. Hence, the impugned order is liable to be set aside.
- The Ld. Assistant Commissioner has failed to appreciate the contract terms, between the appellant and the buyer, which clearly stipulated that the contract price shall be adjusted on the basis of debit notes/ credit notes issued by the buyer to the appellant. The Ld. Assistant Commissioner has failed to appreciate that debit notes issued after the issuance of the final invoice needs to be considered while arriving at the final transaction value. Hence, the impugned order is liable to be set aside.
- As per Section 14 of the Customs Act, 1962, the price to be considered for the purpose of calculating the transaction value is the actual price paid or payable. The relevant extract of Section 14 of the Act is reproduced herein below.

"SECTION 14. Valuation of goods. (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf"
- It is not the case of the department that the buyer and seller are related. It is also not a case of the department that the appellant has

realized any amount more than the contract price, which has been received by them through the Bank. Thereafter, the buyer has issued a debit note to the appellant for penalty of quantity & quality of the material. Based on such debit notice, the appellant has issued a final invoice to the buyer, adjusting the amount of debit note. In fact, the department accepts and admits this factual position. In other words, the price actually paid for the goods exported was the price realized by them as per the contract between the buyer and seller. The price actually received is to be determined after adjusting the debit note issued by the buyer. Hence, the same shall be considered as the transaction value on which duty liability has to be discharged.

- the appellants submit that it is important to bear in mind the principle of reading the contract and interpretation thereof to ascertain the true intention of the parties to the contract/agreement. The contract is to be read as a whole.
- Without prejudice, the appellant submits that the final value is to be determined based on the analysis report of the Customs Laboratory or CCIC at the discharge port. It is well-settled law that the department ought to have considered the report of the Customs Laboratory, Kandla, especially when the provisional assessment was made due to pending test reports from the customs laboratory.

The impugned order is without jurisdiction. The Hon'ble CESTAT has allowed the appeal of the appellant and consequently, the final assessment order dated 21.11.2016 has been quashed and set aside. Once that is the case, the value as prayed by the appellant shall be treated as the appropriate transaction value and the appellant is entitled to a refund of excess duty paid at the time of export.

- Without prejudice, the impugned order is without authority of law, since the department cannot reopen the assessment order and reassess the Shipping Bill when the department has never challenged the said order. The department has incorrectly interpreted the order of the Hon'ble CESTAT and issued the impugned order. If such an interpretation is accepted, the assessee can never have an end to the litigation. Hence, the impugned order is liable to be set aside.
- The impugned order has been passed beyond the reasonable time limit hence, the same is barred by limitation and liable to be set aside.
- The appellant finally submitted to set aside the impugned order.

4. Shri Shrikant Gharat, Advocate and Shri Anshul Jain, Advocate, appeared for personal hearing on 23.05.2025. They reiterated the submissions made at the time of filing appeal. They submitted the decision of Hon'ble Tribunal Hyderabad in the case of Commissioner of Customs &

C. Ex, Guntur Versus Alfà Exports (EOU) [2019 (370) ELT 648 (Tri Hyd)] and Circular No 12/2014 – mcus dated 17.11.2014 issued from F. No. 465/2013-cus V and requested to drop the proceedings. The appellant vide additional submission dated 26.05.2025 submitted that:

➤ The impugned orders have been issued in violation of principle of Judicial Discipline. At the time of export, the Appellant's Shipping Bills were provisionally assessed. Thereafter, the same were finally assessed by the Ld. Assessing Officer. However, while determining the transaction value, the Ld. Assessing Officer failed to consider the debit notes raised by the buyer. Being aggrieved, the Appellant filed an appeal against the assessment orders. But the same were dismissed. Being aggrieved, the Appellant challenged the order before the Hon'ble Tribunal vide Customs Appeal No. 11734 to 11735 of 2017. The Hon'ble Tribunal vide order dated 16.08.2023, allowed the appeals filed by the Appellant against the order of the Ld. Commissioner of Customs (Appeals). Once that is the case, the Respondent cannot once again finalize the assessment as his own discretion. The appellant further submitted that the department, if aggrieved with the decision of Hon'ble Tribunal, ought to have filed an appeal against the order of the Hon'ble Tribunal. The de-novo adjudication or assessment is in violation of principle of Judicial Discipline. In this regard, the Appellant would like to place reliance on the following judicial pronouncements:

- (i) UOI vs Kamlakshi Finance Corporation Ltd [1991 (55) ELT 433 SC]
- (ii) Chirag International vs Collector of Customs [1989 (41) ELT 517]
- (iii) Hindustan Poles Corporation Vs Commissioner of Central Excise, Calcutta [2006 (196) E.L.T. 400]
- (iv) Shree Banarsi Marble Stones P. Ltd vs Commr. or Customs, Mumbai [2000(118) E.L.T. 708]

5. I have carefully gone through the impugned order, appeal memorandum and submissions made by the appellant and the submissions made during personal hearing as well as the documents and evidences available on record. It is observed that the appellant exported Bauxite in terms of a contract for supply and purchase of Bauxite entered into by them with respective Dubai based buyer. The goods so exported were originally assessed provisionally for the want of NOC from Geology and Mining department, Chemical Test results from Customs Laboratory

Kandla and subsequently, finalized vide the then Assistant Commissioner, Custom House, Okha vide his OIO No. 02/AC/ASV/2016-17 dated 21.11.2016. The finalization of the subject 02 Shipping Bills was done considering the moisture content @ 8.35% tested by M/s. Ashapura Minechem Ltd., (in-house ISO Laboratory) as against the appellant contention to finalize the subject two Shipping Bills considering the moisture content @ 8.62% as per the test conducted by the third-party surveyor viz. CCIC Shandong Co. Ltd., Shandong, China at discharge port as per the terms of clause 16 of the contract dated 14.08.2015. Being aggrieved with the above mentioned OIO, the appellant had filed an appeal before the Commissioner (Appeals), Customs, Ahmedabad. The Commissioner (Appeals), Customs, Ahmedabad vide his OIA No. JMN-CUSTOM-000-APP-020 TO 021-17-18 DT. 03.07.2017 rejected the appeal filed by the appellant and upheld the aforesaid OIO passed by the then Assistant Commissioner, Custom House, Okha. Further, the Hon'ble CESTAT, Ahmedabad has decided the subject appeals filed by the appellant against the order of Commissioner (Appeal) dated 03.07.2017 vide their Final Order No. A/11712-11713/2023 dated 16.08.2023 and has set aside the order of finalization of assessment and OIA No. JMN-CUSTOM-000-APP-020 TO 021-17-18 DT. 03.07.2017 and allowed the appeal filed by the appellant.

5.1 It is further observed that the Adjudicating Authority, vide the impugned order, has directed the finalization of both Shipping Bills by allowing a deduction of moisture content at the rate of 8.35%. This deduction is based on the pre-shipment test conducted by the in-house ISO-approved laboratory, as assessed and confirmed by the Assistant Commissioner, Custom House, Okha, through Order-in-Original No. 02/AC/ASV/2016-17 dated 21.11.2016, and subsequently upheld by the Commissioner (Appeals) vide Order-in-Appeal No. JMN-CUSTOM-000-APP-020 TO 021-17-18 dated 03.07.2017. The Authority did not consider the higher moisture content of 8.62% as reported by the third-party surveyor, CCIC Shandong Co. Ltd., Shandong, China, based on testing conducted at the discharge port in accordance with Clause 16 of the contract dated 14.08.2015.

5.2 It is observed that the Hon'ble Tribunal vide Final Order No. A/11712-11713/2023 dated 16.08.2023 and has set aside the order of finalization of assessment wherein the final assessment was done considering the moisture content @ 8.35% and OIA No. JMN-CUSTOM-000-APP-020 TO 021-17-18 DT. 03.07.2017 which upheld the final assessment done considering the moisture content @ 8.35%. The Hon'ble Tribunal, Ahmedabad has allowed the appeal filed by the appellant. The

relevant paras of the order of Hon'ble Tribunal dated 16.08.2023 is reproduced as under:

"2.2 It can be seen that the assessment has been finalized of the Shipping Bill No. F-38 dated 10.09.2015, and Shipping Bill No. F-39 dated 14.09.2015, by deducting upon the moisture contents @3.35% on the basis of pre-shipment test by ISO Lab. The initial issue on the basis of which provisional assessment was done which has been altogether ignored in the order of the adjudicating authority and the same has been confirmed in order-in-appeal bearing No. JMN-CUSTM-000-APP-020 TO 021-17-18 Dated 03.07.2017, again on the basis of moisture contents difference at the port of exportation and price of importation.

2.3. From the foregoing, it is clear that the issue which was the basis of the provisional assessment has been ignored altogether and a fresh issue has been framed by the department and has been conveniently decided ignoring the NOC which was required for re-export.

3. "We, therefore, find that at this stage when against the order of final assessment department is not even in appeal, there is no reason for us to sustain the order of the lower authorities. The order of finalization of assessment is set aside, appeal allowed by setting aside the impugned order. We are not however commenting about the original provisional assessment, as the status is not known to us, nor is appeal made against such assessment, Appeals are allowed."

5.3 In view of the above and the submissions made by the appellant in the grounds of appeal as well as the additional submission dated 26.05.2025, it is observed that the Hon'ble Tribunal, vide Final Order No. A/11712-11713/2023 dated 16.08.2023, set aside the order of finalization of assessment. The final assessment in question had been carried out by considering a moisture content of 3.35%, whereas the appellant had consistently contended that the finalization of the two subject Shipping Bills should be based on a moisture content of 8.62%, as per the test conducted by the third-party surveyor, CCIC Shandong Co. Ltd., Shandong, China, at the discharge port, in accordance with Clause 16 of the contract dated 14.08.2015. The aforementioned Order-in-Appeal No. JMN-CUSTOM-000-APP-020 TO 021-17-18 dated 03.07.2017, which upheld the assessment at 3.35%, was also effectively set aside. The Tribunal allowed the appeals filed by the appellant. Accordingly, it was not open to the Adjudicating Authority to once again finalize the Shipping Bills by applying the moisture content of 3.35%, as doing so is in direct

contravention of the Tribunal's Order dated 16.08.2023 and amounts to a breach of the principles of judicial discipline.

5.4 In this regard, I concur with the contentions raised by the appellant that, once the Hon'ble Tribunal has allowed the appeal in their favour, the Respondent cannot unilaterally re-finalize the assessment at their own discretion. It is pertinent to note that the Department has not filed any appeal against the Hon'ble Tribunal's Order dated 16.08.2023. Accordingly, the said Order Final Order No. A/11712-11713/2023 has attained finality, and any assessment made in contravention of this binding decision is unsustainable in law and liable to be set aside.

6 In view of the above I set aside the impugned order and allow the appeal of the appellant with consequential relief, if any.



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



By Registered Post A.D.

F.Nos. S/49-102/CUS/JMN/2023-24

Dated - 27.05.2025

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To,

- ✓ 1. M/s Orient Ceratech Ltd., Lawrence & Mayo House, 3rd Floor, 276, D.N.Road, Fort, Mumbai - 400001,
- 2. Shri Shrikant S. Gharat, Advocate, SRA Consulate, Office No 22, 2nd Floor, Sharda Bhavan, CHSL, NANDApATKAR Road, Vile Parle (East), Mumbai - 400057

• **Copy to:**

- 1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
- 2. The Principal Commissioner of Customs, Customs, Jamnagar.
- 3. The Deputy Commissioner of Customs, Customs ~~HOUSE, OKHA~~
- 4. Guard File

सत्यापित/ATTESTED
[Signature]
अधीक्षक/SUPERINTENDENT
सीमा શુલ્ક (અપીલ), અહમ્દાબાદ.
CUSTOMS (APPEALS), AHMEDABAD.

